

# ALASKA FOREST MANAGEMENT STATUTES & REGULATIONS

Effective July 2008

DIVISION OF FORESTRY  
DEPARTMENT OF NATURAL RESOURCES

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This booklet compiles the Alaska Statutes and Alaska Administrative Code sections that directly govern forest management activities on state forest land as of July 2003. It does not include the attorney general's notes nor the history notes that are given in the official compilation. The Department of Natural Resources provides this booklet as a public courtesy. The department cannot guarantee the absolute accuracy of this reproduction of the statutes and regulations. For the official published version of the Act, and for any changes subsequent to July 2008, please refer to the Alaska Statutes and Alaska Administrative Code. For statutes and regulations governing forest practices on all land ownerships, see the Alaska Forest Resources and Practices Act (AS 41.17) and Regulations (11 AAC 95). For regulations governing Forest Fire Protections see 11 AAC 95.

# **Table of Contents: Statutes and Regulations Booklet July 2008**

## **STATUTES**

### **Title 09. Code of Civil Procedure**

#### **Chapter 09.45. Actions Relating to Real Property**

Sec. 09.45.730. Trespass by cutting or injuring trees or shrubs.

### **Title 11. Criminal Law**

#### **Chapter 46. Offenses Against Property**

Sec. 11.46.100. Theft defined.

Sec. 11.46.120. Theft in the first degree.

Sec. 11.46.130. Theft in the second degree.

Sec. 11.46.140. Theft in the third degree.

Sec. 11.46.150. Theft in the fourth degree.

Sec. 11.46.320. Criminal trespass in the first degree.

Sec. 11.46.330. Criminal trespass in the second degree.

Sec. 11.46.350. Definition.

### **Title 12. Code of Criminal Procedure**

#### **Chapter 55. Sentencing and Probation**

Sec. 12.55.035. Fines.

Sec. 12.55.135. Sentences of imprisonment for misdemeanors.

### **Title 16. Public Resources**

#### **Chapter 16.14. Rivers, Lakes, and Streams**

Sec. 16.14.841. Fishway required.

Sec. 16.14.861. Penalty for violating fishway and hatchery requirements.

Sec. 16.14.871. Protection of fish and game.

Sec. 16.14.891. Exemption for emergency situations.

Sec. 16.14.896. Penalty for causing material damage

Sec. 16.14.901. Penalty for violations of AS 41.14.870 - 41.14.895

### **Title 36. Public Contracts**

#### **Chapter 15. Alaska Product Preferences**

Sec. 36.15.010. Use of local forest products required in projects financed by public money.

#### **Chapter 25. Contractors' Bonds**

Sec. 36.25.010. Bonds of contractors for public buildings or works.

### **Title 38. Public Land**

#### **Chapter 4. Policy for Use and Classification of State Land Surface**

Sec. 38.04.058. Restrictions on easement or right-of-way use.

Sec. 38.04.065. Land use planning and classification.

Sec. 38.04.200. Traditional means of access.

Sec. 38.04.910. Definitions.

## **Chapter 5. Alaska Land Act**

Sec. 38.05.035. Powers and duties of the director.

Sec. 38.05.110. Sale of timber and materials; account.

Sec. 38.05.112. Forest land use plans.

Sec. 38.05.113. Five-year sale schedule.

Sec. 38.05.115. Limitations and conditions of sale.

Sec. 38.05.117. Salvage sales.

Sec. 38.05.118. Negotiated sales.

Sec. 38.05.120. Disposal procedure.

Sec. 38.05.123. Negotiated timber sales for local manufacture of wood products.

Sec. 38.05.300. Classification of land.

Sec. 38.05.810. Public and charitable use.

Sec. 38.05.850. Permits.

Sec. 38.05.945. Notice.

Sec. 38.05.965. Definitions.

## **Chapter 41.15. Forests**

### **Article 1. Protection of forested land**

Sec. 41.15.010. Intent.

Sec. 41.15.020. Regulations.

Sec. 41.15.030. Contracts for forest protection; emergency fire-fighters.

Sec. 41.15.040. Right of entry to control and suppress fires.

Sec. 41.15.050. Fire season.

Sec. 41.15.060. Permits.

Sec. 41.15.070. Disposal of burning materials.

Sec. 41.15.080. Equipment and notice required.

Sec. 41.15.090. Building or leaving fires.

Sec. 41.15.100. Setting fires without consent.

Sec. 41.15.110. Uncontrolled spread of fire; leaving fire unattended.

Sec. 41.15.120. Failure to assist in preventing or suppressing fires.

Sec. 41.15.130. Backfires excluded.

Sec. 41.15.140. Penalty.

Sec. 41.15.150. Criminal penalty for setting fires.

Sec. 41.15.160. Double damages in civil actions.

Sec. 41.15.170. Definitions.

### **Article 3. Fire Suppression Fund.**

Sec. 41.15.200. Statement of purpose.

Sec. 41.15.210. Fire suppression fund.

Sec. 41.15.220. Composition of fund.

Sec. 41.15.230. Disbursement.

Sec. 41.15.240. Records of fire suppression fund.

Sec. 41.15.300. Haines State Forest Resource Management Area.

Sec. 41.15.305. Establishment and boundaries.  
Sec. 41.15.310. Coordinated management.  
Sec. 41.15.315. Multiple-use management.  
Sec. 41.15.320. Management plan and regulations.  
Sec. 41.15.325. Cooperative management agreements.  
Sec. 41.15.330. Existing rights.

**Article 5. Miscellaneous Provisions.**

Sec. 41.15.900. Observance of Arbor Day.

**Chapter 35. Historic Preservation**

**Article 1. Alaska Historic Preservation Act**

Sec. 41.35.010. Declaration of policy.  
Sec. 41.35.070. Preservation of Historic, Prehistoric, and Archeological  
Resources Threatened By Public Construction

**Title 44. State Government**

**Chapter 44.37. Department of Natural Resources.**

Sec. 44.37.040. Duties of department with respect to historic preservation and  
archeology.

**Title 45. Trade and Commerce**

**Chapter 45.50. Competitive Practices and Regulation of Competition**

Sec. 45.50.210. Application for registration of distinctive brand.  
Sec. 45.50.220. Termination and renewal.  
Sec. 45.50.230. Presumption from display.  
Sec. 45.50.232. Reporting of lost logs to the department.  
Sec. 45.50.234. Publication of notice of intent to claim abandoned property.  
Sec. 45.50.235. Ownership of unbranded and abandoned timber property.  
Sec. 45.50.237. Extension of period for recovery of timber property.  
Sec. 45.50.240. Property rights in brand.  
Sec. 45.50.250. Recording brand.  
Sec. 45.50.260. Registration upon transfer.  
Sec. 45.50.270. Publication of current list of brands.  
Sec. 45.50.280. Certified copies of certificate or transfer instrument.  
Sec. 45.50.290. Certificate of registration as evidence.  
Sec. 45.50.300. Registration as constructive notice.  
Sec. 45.50.310. Disposition of fees.  
Sec. 45.50.315. Regulations.  
Sec. 45.50.320. Penalties for fraudulent branding or other acts.  
Sec. 45.50.325. Definitions.

# **REGULATIONS**

## **TITLE 11. Natural Resources**

### **CHAPTER 05. Fees for Department Services**

11 AAC 05.010. Fees.

### **CHAPTER 071. Timber and Material Sales**

#### **Article 1. Timber and Material Sale Procedures Section**

- 11 AAC 71.005. Applicability.
- 11 AAC 71.010. Timber and material sale offering.
- 11 AAC 71.015. Timber or material requested by other state agencies.
- 11 AAC 71.020. Notice of sale.
- 11 AAC 71.025. Applicable laws and regulations
- 11 AAC 71.030. Qualifications of applicant or bidder.
- 11 AAC 71.035. Application for negotiated sales.
- 11 AAC 71.040. No rights before sale.
- 11 AAC 71.045. Negotiated sales
- 11 AAC 71.050. Negotiated personal-use sales; limited material permits.
- 11 AAC 71.055. Negotiated sales under as 38.05.118.
- 11 AAC 71.060. Competitive sales.
- 11 AAC 71.065. Competitive sale bid deposits
- 11 AAC 71.070. Pre-sale deposits for negotiated timber sales
- 11 AAC 71.075. Award of sale.
- 11 AAC 71.080. Passage of title.
- 11 AAC 71.085. Volume determinations.
- 11 AAC 71.090. Pricing for sale of materials.
- 11 AAC 71.092. Pricing for sale of timber.
- 11 AAC 71.094. Number of high value-added contracts per region.
- 11 AAC 71.095. Performance bond.
- 11 AAC 71.096. Definition of "high value-added wood product."
- 11 AAC 71.098. Availability of processing facilities.
- 11 AAC 71.100. Rights-of-way.

#### **Article 2. Timber and material sale contracts and operations**

- 11 AAC 71.200. Contract provisions.
- 11 AAC 71.205. Amendments to contract.
- 11 AAC 71.210. Contract extension.
- 11 AAC 71.215. Assignments.
- 11 AAC 71.220. Suspension.
- 11 AAC 71.225. Termination of contract.
- 11 AAC 71.230. Primary manufacture of timber.
- 11 AAC 71.235. Use of roads and facilities.
- 11 AAC 71.240. Sale of other timber and materials.
- 11 AAC 71.245. Damages.
- 11 AAC 71.250. Protection of improvements.
- 11 AAC 71.255. Sanitation.
- 11 AAC 71.260. Notice or demand.

- 11 AAC 71.265. Rehabilitation and intensive management practices.
- 11 AAC 71.270. Proper location by purchaser.
- 11 AAC 71.275. Purchaser's representative.
- 11 AAC 71.280. Inspection and reports.

### **Article 3. Timber and logging requirements**

- 11 AAC 71.300. Annual operating plan.
- 11 AAC 71.305. Quarters for state personnel.
- 11 AAC 71.310. Construction authorization.
- 11 AAC 71.315. Log identification.
- 11 AAC 71.320. Orderly progress of logging.
- 11 AAC 71.325. Completed areas.
- 11 AAC 71.330. Loss of timber.
- 11 AAC 71.335. Hazard reduction.
- 11 AAC 71.340. Safety.
- 11 AAC 71.345. Snag felling.
- 11 AAC 71.350. Stump heights

### **Article 4. Unbranded or abandoned timber property sales.**

- 11 AAC 71.400. Sale of unbranded or abandoned timber property.
- 11 AAC 71.405. Application for log salvage license.
- 11 AAC 71.410. Selection of applicant.
- 11 AAC 71.415. License fees and conditions.
- 11 AAC 71.420. Prohibited areas
- 11 AAC 71.430. Revocation or suspension.

### **Article 5. Log brands**

- 11 AAC 71.500. Log brand.
- 11 AAC 71.510. Barged logs.
- 11 AAC 71.520. Brand design.
- 11 AAC 71.530. Application requirements.
- 11 AAC 71.540. Cancellation of registration.
- 11 AAC 71.550. Fees for registration or transfer of registration.
- 11 AAC 71.560. Reservation of brands.
- 11 AAC 71.570. Registration upon transfer.
- 11 AAC 71.580. Use of unregistered brand.
- 11 AAC 71.590. Notice or demand.

### **Article 6. General provisions.**

- 11 AAC 71.900. Warranty.
- 11 AAC 71.910. Definitions.

**Note:** Regulations under 11 AAC 95 for Forest Practices and Forest Fire Protection are in the green fieldbook, Alaska Forest Resources & Practices Regulations.

# STATUTES

## **Title 09. Code of Civil Procedure**

### **Chapter 09.45. Actions Relating to Real Property**

**Sec. 09.45.730. Trespass by cutting or injuring trees or shrubs.** A person who without lawful authority cuts down, girdles, or otherwise injures or removes a tree, timber, or a shrub on (1) the land of another person or on the street or highway in front of a person's house, or (2) a village or municipal lot, or cultivated grounds, or the commons or public land of a village or municipality, or (3) the street or highway in front of land described in (2) of this section, is liable to the owner of that land, or to the village or municipality for treble the amount of damages that may be assessed in a civil action. However, if the trespass was unintentional or involuntary, or the defendant had probable cause to believe that the land on which the trespass was committed was the defendant's own or that of the person in whose service or by whose direction the act was done, or where the timber was taken from unenclosed woodland for the purpose of repairing a public highway or bridge on or adjoining the land, only actual damages may be recovered. (§ 27.01 ch 101 SLA 1962; am § 16 ch 85 SLA 1988)

## **Title 11. Criminal Law**

### **Chapter 46. Offenses Against Property**

**Sec. 11.46.100. Theft defined.** A person commits theft if

- (1) with intent to deprive another of property or to appropriate property of another to oneself or a third person, the person obtains the property of another;
- (2) the person commits theft of lost or mislaid property under AS 11.46.160;
- (3) the person commits theft by deception under AS 11.46.180 ;
- (4) the person commits theft by receiving under AS 11.46.190 ;
- (5) the person commits theft of services under AS 11.46.200 ;
- (6) the person commits theft by failure to make required disposition of funds received or held under AS 11.46.210 . (§ 4 ch 166 SLA 1978)

**Sec. 11.46.120. Theft in the first degree.** (a) A person commits the crime of theft in the first degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is \$25,000 or more.

(b) Theft in the first degree is a class B felony. (§ 4 ch 166 SLA 1978; am § 1 ch 133 SLA 1988; am § 1 ch 49 SLA 1989)

**Sec. 11.46.130. Theft in the second degree.** (a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

- (1) the value of the property or services is \$500 or more but less than \$25,000;
- (6) the value of the property is \$50 or more but less than \$500 and within the preceding five years the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of
  - (A) AS 11.46.120, or an offense under another law or ordinance with similar elements;

(B) a crime set out in this subsection or an offense under another law or ordinance with similar elements;

(C) AS 11.46.140 (a)(1) or (2), or an offense under another law or ordinance with similar elements; or

(D) AS 11.46.220 (c)(1) or (c)(2)(A), or an offense under another law or ordinance with similar elements. [...]

(c) Theft in the second degree is a class C felony. (§ 4 ch 166 SLA 1978; am § 2 ch 133 SLA 1988; am § 2 ch 49 SLA 1989; am §§ 1,2 ch 131 SLA 1992; am § 13 ch 56 SLA 2001; am § 1 ch 67 SLA 2005; am § 6 ch 12 SLA 2006)

**Sec. 11.46.140. Theft in the third degree.** (a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$50 or more but less than \$500; [...]

(3) the value of the property is less than \$50 and, within the past five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of theft or concealment of merchandise, or an offense under another law or ordinance with similar elements.

(b) Theft in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 3 ch 133 SLA 1988; am § 3 ch 49 SLA 1989; am § 3 ch 65 SLA 2000; am § 5 ch 67 SLA 2005)

**Sec. 11.46.150. Theft in the fourth degree.** (a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is less than \$50.

(b) Theft in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.320. Criminal trespass in the first degree.** (a) A person commits the crime of criminal trespass in the first degree if the person enters or remains unlawfully

(1) on land with intent to commit a crime on the land; or

(2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 12 ch 102 SLA 1980)

**Sec. 11.46.330. Criminal trespass in the second degree.** (a) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully

(1) in or upon premises; or

(2) in a propelled vehicle.

(b) Criminal trespass in the second degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.350. Definition.** (b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless



- (1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or
- (2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances.
- (c) A notice against trespass is given if the notice
  - (1) is printed legibly in English;
  - (2) is at least 144 square inches in size;
  - (3) contains the name and address of the person under whose authority the property is posted and the name and address of the person who is authorized to grant permission to enter the property;
  - (4) is placed at each roadway and at each way of access onto the property that is known to the landowner;
  - (5) in the case of an island, is placed along the perimeter at each cardinal point of the island; and
  - (6) states any specific prohibition that the posting is directed against, such as "no trespassing," "no hunting," "no fishing," "no digging," or similar prohibitions. (§ 4 ch 166 SLA 1978; am § 9 ch 61 SLA 1982; am § 4 ch 168 SLA 1988; am § 4 ch 64 SLA 1996)

## **Title 12. Code of Criminal Procedure**

### **Chapter 55. Sentencing and Probation**

**Sec. 12.55.035. Fines.** (a) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than [...]

- (2) \$250,000 for a class A felony;
- (3) \$100,000 for a class B felony;
- (4) \$50,000 for a class C felony;
- (5) \$10,000 for a class A misdemeanor;
- (6) \$2,000 for a class B misdemeanor;
- (7) \$500 for a violation.
- (c) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of
  - (1) an amount that is
    - (A) \$1,000,000 for a felony offense or for a misdemeanor offense that results in death;
    - (B) \$200,000 for a class A misdemeanor offense that does not result in death;
    - (C) \$25,000 for a class B misdemeanor offense that does not result in death;
    - (D) \$10,000 for a violation;
  - (2) three times the pecuniary gain realized by the defendant as a result of the offense; or
  - (3) three times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider

- (1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;
- (2) measures taken by the organization to prevent a recurrence of the offense;
- (3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and
- (4) the extent to which the organization will pass on to consumers the expense of the fine.

(f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense. (§ 12 ch 166 SLA 1978; am § 17 ch 45 SLA 1982; am § 26 ch 143 SLA 1982; am § 4 ch 59 SLA 1988; am § 18 ch 85 SLA 1988; am §§ 1,2 ch 142 SLA 1990; am § 2 ch 71 SLA 1992; am §§ 2-4 ch 79 SLA 1994; am § 3 ch 56 SLA 1998; am §§ 1, 2 ch 131 SLA 2002; am § 7 ch 73 SLA 2006 ; am § 21 ch 24 SLA 2007)

#### **For sentences of imprisonment for felonies, see Sec. 12.55.125**

**Sec. 12.55.135. Sentences of imprisonment for misdemeanors.** (a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense. (§ 12 ch 166 SLA 1978; am § 2 ch 139 SLA 1980; am § 22 ch 59 SLA 1982; am § 13 ch 61 SLA 1982; am § 31 ch 143 SLA 1982; am §§ 4, 5 ch 92 SLA 1983; am §§ 5, 6 ch 53 SLA 1991; am § 34 ch 6 SLA 1996; am § 14 ch 64 SLA 1996; am §§ 5, 6 ch 71 SLA 1996; am §§ 8, 9 ch 86 SLA 1998; am §§ 3, 4 ch 106 SLA 1998; am § 16 ch 53 SLA 2006; am § 1 ch 86 SLS 2006; am §§ 4, 5 ch 87 SLA 2006)

### **Title 16. Fish and Game**

#### **Chapter 16.05. Fish and Game Code**

**Sec. 16.05.841. Fishway required.** If the deputy commissioner considers it necessary, every dam or other obstruction built by any person across a stream frequented by salmon or other fish shall be provided by that person with a durable and efficient fishway and a device for efficient passage for downstream migrants. The fishway or device or both shall be maintained in a practical and effective manner in the place, form, and capacity the deputy commissioner approves, for which plans and specifications shall be approved by the deputy commissioner upon application. The fishway or device shall be kept open, unobstructed, and supplied with a sufficient quantity of water to admit freely the passage of fish through it. (§ 30 art I ch 94 SLA 1959; am E.O. No. 107 § 5 (2003); am E.O. No. 114 § 2 (2008))

**Sec. 16.05.861. Penalty for violating fishway and hatchery requirements.**

(a) The owner of a dam or obstruction who fails to comply with AS 41.14.840 or 41.14.850 or a regulation adopted under AS 41.14.840 or 41.14.850 within a reasonable time specified by written notice from the deputy commissioner is guilty of a misdemeanor, and is punishable by a fine of not more than \$1,000. Each day the owner fails to comply constitutes a separate offense.

(b) In addition to the fine, the dam or other obstruction managed, controlled, or owned by a person violating AS 41.14.840 or 41.14.850 or a regulation adopted under AS 41.14.840 or 41.14.850 is a public nuisance and is subject to abatement. (§ 30 art I ch 94 SLA 1959; am § 29 ch 14 SLA 1987; am E.O. No. 107 § 5 (2003) ; am E.O. No. 114 § 2 (2008))

**Sec. 16.05.871. Protection of fish and game.** (a) The deputy commissioner shall, in accordance with AS 44.62 (Administrative Procedure Act), specify the various rivers, lakes, and streams or parts of them that are important for the spawning, rearing, or migration of anadromous fish.

(b) If a person or governmental agency desires to construct a hydraulic project, or use, divert, obstruct, pollute, or change the natural flow or bed of a specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of a specified river, lake, or stream, the person or governmental agency shall notify the deputy commissioner of this intention before the beginning of the construction or use.

(c) The deputy commissioner shall acknowledge receiving the notice by return first class mail. If the deputy commissioner determines that the following information is required, the letter of acknowledgement shall require the person or governmental agency to submit to the deputy commissioner:

- (1) full plans and specifications of the proposed construction or work;
- (2) complete plans and specifications for the proper protection of fish and game in connection with the construction or work, or in connection with the use; and
- (3) the approximate date the construction, work, or use will begin.

(d) The deputy commissioner shall approve the proposed construction, work, or use in writing unless the deputy commissioner finds the plans and specifications insufficient for the proper protection of fish and game. Upon a finding that the plans and specifications are insufficient for the proper protection of fish and game, the deputy commissioner shall notify the person or governmental agency that submitted the plans and specifications of that finding by first class mail. The person or governmental agency may, within 90 days of receiving the notice, initiate a hearing under AS 44.62.370. The hearing is subject to AS 44.62.330 - 44.62.630. (§ 31 art I ch 94 SLA 1959; am § 1 ch 180 SLA 1960; am § 1 ch 132 SLA 1962; am § 1 ch 89 SLA 1966; am §§ 1, 2 ch 84 SLA 1980; am E.O. No. 107 § 5 (2003) ; am E.O. No. 114 § 3 (2008))

**Sec. 16.05.891. Exemption for emergency situations.** In an emergency arising from weather or stream flow conditions, the deputy commissioner, through authorized representatives, shall issue oral permits to a riparian owner for removing

obstructions or for repairing existing structures without the necessity of submitting prepared plans and specifications as required by AS 41.14.870. (§ 31 art I ch 94 SLA 1959; am § 1 ch 180 SLA 1960; am § 1 ch 132 SLA 1962; am E.O. No. 107 § 5 (2003) ; am E.O. No. 114 § 3 (2008))

**Sec. 16.05.896. Penalty for causing material damage.** If a person or governmental agency fails to notify the deputy commissioner of any construction or use that causes material damage to the spawning beds or prevents or interferes with the migration of anadromous fish, or by neglect or noncompliance with plans and specifications required and approved by the deputy commissioner causes material damage to the spawning beds or prevents or interferes with the migration of anadromous fish, the person or governmental agency shall be guilty of a misdemeanor. (§ 31 art I ch 94 SLA 1959; am § 1 ch 180 SLA 1960; am § 1 ch 132 SLA 1962; am E.O. No. 107 § 5 (2003) ; am E.O. No. 114 § 3 (2008))

**Sec. 16.05.901. Penalty for violations of AS 41.14.870 - 41.14.895.** (a) A person who violates AS 41.14.870 - 41.14.895 is guilty of a class A misdemeanor. (b) The court shall transmit the proceeds of all fines to the proper state officer for deposit in the general fund of the state. (§ 33 art I ch 94 SLA 1959; am § 6 ch 131 SLA 1960; am § 11 ch 208 SLA 1975; am § 19 ch 132 SLA 1984; am E.O. No. 107 § 5 (2003); am E.O. No. 114 § 3 (2008))

## **Title 36. Public Contracts**

### **Chapter 15. Alaska Product Preferences**

**Sec. 36.15.010. Use of local forest products required in projects financed by public money.** In a project financed by state money in which the use of timber, lumber, and manufactured lumber products is required, only timber, lumber, and manufactured lumber products originating in this state from local forests shall be used wherever practicable. (§ 14-3-1 ACLA 1949)

### **Chapter 25. Contractors' Bonds**

**Sec. 36.25.010. Bonds of contractors for public buildings or works.** (a) Except as provided in AS 44.33.300 , before a contract exceeding \$100,000 for the construction, alteration, or repair of a public building or public work of the state or a political subdivision of the state is awarded to a general or specialty contractor, the contractor shall furnish to the state or a political subdivision of the state the following bonds, which become binding upon the award of the contract to that contractor:

- (1) a performance bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond; the amount of the performance bond shall be equivalent to the amount of the payment bond;
- (2) a payment bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the

amount of the bond for the protection of all persons who supply labor and material in the prosecution of the work provided for in the contract; when the total amount payable by the terms of the contract is not more than \$1,000,000, the payment bond shall be in a sum of one-half the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than \$1,000,000 and not more than \$5,000,000, the payment bond shall be in a sum of 40 percent of the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than \$5,000,000, the payment bond shall be in the sum of \$2,500,000.

(b) This section does not limit the authority of a contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases specified in (a) of this section.

(c) When no payment bond has been furnished, the contracting department may not approve final payments to the contractor until the contractor files a written certification that all persons who supplied labor or material in the prosecution of the work provided for in the contract have been paid. (§ 1 ch 49 SLA 1953; am § 1 ch 77 SLA 1964; am § 14 ch 142 SLA 1972; am §§ 1,2 ch 180 SLA 1976; am § 8 ch 277 SLA 1976; am 34 ch 108 SLA 1982)

## **Title 38. Public Land**

### **Chapter 4. Policy for Use and Classification of State Land Surface**

**Sec. 38.04.058. Restrictions on easement or right-of-way use.** The commissioner may, under terms agreed to in writing by a grantee, lessee, or interest holder of state land, restrict the use of an easement or right-of-way reserved under AS 38.04.050 , 38.04.055, or other law in order to protect public safety or property. The commissioner may not agree to or enforce a restriction under this section unless the restriction is narrowly tailored to achieve the protection of public safety and property while preserving access to the maximum extent practicable and the commissioner makes a written finding identifying how the restriction will protect public safety and public or private property. (§ 14 ch 152 SLA 1984; am § 3 ch 65 SLA 1997)

**Sec. 38.04.065. Land use planning and classification.** (a) Except as provided in (d) and (h) of this section, the commissioner shall, with local governmental and public involvement under AS 38.05.945 , adopt, maintain, and, when appropriate, revise regional land use plans that provide for the use and management of state-owned land.

(b) In the adoption and revision of regional and site-specific land use plans, the commissioner shall

- (1) use and observe the principles of multiple use and sustained yield;
- (2) consider physical, economic, and social factors affecting the area and involve other agencies and the public in achieving a systematic interdisciplinary approach;
- (3) give priority to planning and classification in areas of potential settlement, renewable and nonrenewable resource development, and critical environmental concern;

- (4) rely, to the extent that it is available, on the inventory of the state land, its resources, and other values;
  - (5) consider present and potential uses of state land;
  - (6) consider the supply, resources, and present and potential use of land under other ownership within the area of concern;
  - (7) plan for compatible surface and mineral land use classifications; and
  - (8) provide for meaningful participation in the planning process by affected local governments, state and federal agencies, adjacent landowners, and the general public.
- (c) The commissioner shall adopt regional land use plans for state land. Each regional land use plan must identify and delineate
- (1) areas of settlement and settlement impact, where land must be classified for various private uses, renewable and nonrenewable resource development, and for public recreation, open space, and other public uses desirable in and around settlement; and
  - (2) areas that must be retained in state ownership and planned and classified for various uses and purposes under AS 38.04.015 .
- (d) The commissioner may adopt as a land use plan a comprehensive plan adopted by a municipality having planning and zoning powers or a land management plan adopted by another governmental entity if the commissioner determines that the plan adequately recognizes and protects state interests. A decision to adopt the plan must be preceded by public hearings in affected and interested communities and by a draft decision, available for public review, that describes the state's interests and how the state will implement the plan.
- (e) Land shall be classified as provided in AS 38.05.300 .
- (f) Each decision about the location of easements and rights-of-way, other than for minor access, shall be integrated with land use planning and classification.
- (g) Each land use plan adopted by the commissioner under this section shall be consistent with municipal land use plans to the maximum extent determined consistent with the state interests and the purposes of this chapter.
- (h) Before the commissioner adopts a regional land use plan, a land classification may be made on the basis of a site-specific land use plan. After adoption of a regional land use plan, land classifications shall be made under the plan.
- (i) An oil and gas lease sale or gas only lease sale is not subject to this section. Oil and gas lease sales and gas only lease sales are subject to the planning process established under AS 38.05.180. (§ 5 ch 181 SLA 1978; am § 8 ch 113 SLA 1981; am § 93 ch 6 SLA 1984; am §§ 1 – 7 ch 75 SLA 1987; am § 3 ch 1 FSSLA 1996; am § 3 ch 20 SLA 1997; am § 8 ch 91 SLA 1997; am § 9 ch 49 SLA 2004)

**Sec. 38.04.200. Traditional means of access.** (a) The commissioner may not manage state land, water, or land and water so that a traditional means of access for traditional outdoor activities is restricted for the purpose of protecting aesthetic values of the land, water, or land and water or is prohibited unless the restriction or prohibition is

- (1) for an area of land, water, or land and water that encompasses 640 contiguous acres or less;

- (2) temporary in nature and effective cumulatively less than eight months in a three-year period;
- (3) for the protection of public safety and public or private property;
- (4) for the development of natural resources and a reasonable alternative for the traditional means of access across the land, water, or land and water for traditional outdoor activities on other land, water, or land and water is available and approved by the commissioner; or
- (5) authorized by act of the legislature.

(b) In this section,

- (1) "aesthetic values" means those values that exist as an expression of the social or cultural viewpoint held by a portion of the population;
- (2) "traditional means of access" means those types of transportation on, to, or in the state land, water, or land and water, for which a popular pattern of use has developed; the term includes flying, ballooning, boating, using snow vehicles, operation of all-terrain vehicles, horseback riding, mushing, skiing, snowshoeing, and walking;
- (3) "traditional outdoor activities" means those types of activities that people may use for sport, exercise, subsistence, including the harvest of foodstuffs, or personal enjoyment, including hunting, fishing, trapping, gathering, or recreational mining, and that have historically been conducted as part of an individual, family, or community life pattern on or in the state land, water, or land and water. (§ 4 ch 65 SLA 1997)

**Sec. 38.04.910. Definitions.** In this chapter, unless the context otherwise requires, (5) "multiple use" means the management of state land and its various resource values so that it is used in the combination that will best meet the present and future needs of the people of Alaska, making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; it includes

- (A) the use of some land for less than all of the resources; and
- (B) a combination of balanced and diverse resource uses that takes into account the short-term and long-term needs of present and future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historic values. [...]

(12) "sustained yield" means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the state land consistent with multiple use. (§ 5 ch 181 SLA 1978; am § 95 ch 6 SLA 1984; am § 8 ch 75 SLS 1987; am § 2 ch 123 SLA 1988; am § 44 ch 50 SLA 1989; am § 5 ch 40 SLA 1998)

## **Chapter 5. Alaska Land Act**

**Sec. 38.05.035. Powers and duties of the director.** (a-d) *excluded.*

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale,

lease, or other disposal of available land, resources, property, or interests in them. In approving a contract under this subsection, the director need only prepare a single written finding. In addition to the conditions and limitations imposed by law, the director may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state. The preparation and issuance of the written finding by the director are subject to the following:

(1) with the consent of the commissioner and subject to the director's discretion, for a specific proposed disposal of available land, resources, or property, or of an interest in them, the director, in the written finding,

(A) shall establish the scope of the administrative review on which the director's determination is based, and the scope of the written finding supporting that determination; the scope of the administrative review and finding may address only reasonably foreseeable, significant effects of the uses proposed to be authorized by the disposal;

(B) may limit the scope of an administrative review and finding for a proposed disposal to

(i) applicable statutes and regulations;

(ii) the facts pertaining to the land, resources, or property, or interest in them, that the director finds are material to the determination and that are known to the director or knowledge of which is made available to the director during the administrative review; and

(iii) issues that, based on the statutes and regulations referred to in (i) of this subparagraph, on the facts as described in (ii) of this subparagraph, and on the nature of the uses sought to be authorized by the disposal, the director finds are material to the determination of whether the proposed disposal will best serve the interests of the state; and

(C) may, if the project for which the proposed disposal is sought is a multiphased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable statutes and regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that pertain solely to the disposal phase of the project when

(i) the only uses to be authorized by the proposed disposal are part of that phase;

(ii) the disposal is a disposal of oil and gas, or of gas only, and, before the next phase of the project may proceed, public notice and the opportunity to comment are provided under regulations adopted by the department unless the project is subject to a consistency review under AS 46.40 and public notice and the opportunity to comment are provided under AS 46.40.096(c);

(iii) the department's approval is required before the next phase of the project may proceed; and

(iv) the department describes its reasons for a decision to phase;

(2) the director shall discuss in the written finding prepared and issued under this subsection the reasons that each of the following was not material to the director's determination that the interests of the state will be best served:



- (A) facts pertaining to the land, resources, or property, or an interest in them other than those that the director finds material under (1)(B)(ii) of this subsection; and
- (B) issues based on the statutes and regulations referred to in (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this subsection;
- (3) a written finding for an oil and gas lease sale or gas only lease sale under AS 38.05.180 is subject to (g) of this section;
- (4) a contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the commissioner approves the contract, but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner;
- (5) *[excluded: pertains only to oil and gas leasing]*
- (6) before a public hearing, if held, or in any case not less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them other than a sale, lease, or other disposal of available land or an interest in land for oil and gas or for gas only under (5) of this subsection, the director shall make available to the public a written finding that, in accordance with (1) of this subsection, sets out the material facts and applicable statutes and regulations and any other information required by statute or regulation to be considered upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based; however, a written finding is not required before the approval of
  - (A) a contract for a negotiated sale authorized under AS 38.05.115 ;
  - (B) a lease of land for a shore fishery site under AS 38.05.082 ;
  - (C) a permit or other authorization revocable by the commissioner;
  - (D) a mineral claim located under AS 38.05.195 ;
  - (E) a mineral lease issued under AS 38.05.205 ;
  - (F) an exempt oil and gas lease sale or gas only lease sale under AS 38.05.180(d) *[excluded: pertains to oil and gas leasing]*
  - (G) a surface use lease under AS 38.05.255 ;
  - (H) a permit, right-of-way, or easement under AS 38.05.850 ;
- (7) the director shall include in
  - (A) a preliminary written finding, if required, a summary of agency and public comments, if any, obtained as a result of contacts with other agencies concerning a proposed disposal or as a result of informal efforts undertaken by the department to solicit public response to a proposed disposal, and the department's preliminary responses to those comments; and
  - (B) the final written finding a summary of agency and public comments received and the department's responses to those comments.
- (f) *[excluded: pertains to preference rights]*
- (g) *[excluded: pertains to oil and gas lease sales]*
- (h) In preparing a written finding under (e)(1) of this section, the director may not be required to speculate about possible future effects subject to future permitting that cannot reasonably be determined until the project or proposed use for which a

written best interest finding is required is more specifically defined, including speculation about

- (1) the exact location and size of an ultimate use and related facilities;
- (2) except as otherwise provided in AS 38.05.073 for land suitable for recreational facilities development leasing, the economic feasibility of ultimate development; and
- (3) future environmental or other laws that may apply at the time of any future development.

(i) A person who is eligible to file an administrative appeal or a request for reconsideration, as appropriate, under this subsection and who is aggrieved by the final written finding of the director entered under (e)(5) or (6) of this section may, within 20 days after the issuance of the final written finding, file an administrative appeal or request reconsideration of the decision by the commissioner. A person is eligible to file an administrative appeal or a request for reconsideration if the person

- (1) meaningfully participated in the process set out in this chapter for receipt of public comment by
  - (A) submitting written comment during the period for receipt of public comment; or
  - (B) presenting oral testimony at a public hearing, if a public hearing was held; and
- (2) is affected by the final written finding.

(j) An administrative appeal or a request for reconsideration submitted under (i) of this section must specify the written finding complained of and the specific basis upon which it is challenged. The commissioner shall grant or deny the administrative appeal or reconsideration request within 30 days after issuance of the final written finding. Failure of the commissioner to act on the request for reconsideration within this period is a denial of the request for reconsideration and a final administrative decision for purposes of appeal to the superior court.

(k) If an administrative appeal or a request for reconsideration is granted, the commissioner may order the director to issue a new final written finding as may be required under the circumstances.

(l) A person may appeal a final written finding issued under (e)(5) or (6) of this section to the superior court, but only if the person was eligible to request, and did request, an administrative appeal or reconsideration of that finding under (i) of this section. The person shall initiate the appeal within 30 days from the date that the decision on administrative appeal or reconsideration is mailed or otherwise distributed, or the date the request for reconsideration is considered denied by the commissioner's failure to act on the request, whichever is earlier. The points on appeal are limited to those presented to the commissioner in the person's administrative appeal or request for reconsideration.

(m) For purposes of appeal under ( l ) of this section, the burden is upon the party seeking review to establish the invalidity of the finding. (§ 5 art II ch 169 SLA 1959; am § 20 ch 152 SLA 1984; am § 10 ch 75 SLA 1987; am § 1 ch 124 SLA 1990; am §§ 2, 4 ch 38 SLA 1994; am § 1 ch 138 SLA 1996; am § 2 ch 140 SLA

1996; am §§ 8, 9 ch 56 SLA 1997; am § 3 ch 27 SLA 2000, am § 2 ch 101 SLA 2001; am §§ 10, 11 ch 49 SLA 2004; am § 1 ch 99 SLA 2006)

**Sec. 38.05.110. Sale of timber and materials; account.** (a) The commissioner shall provide for cruises of timber and appraisals of other materials in or upon state land and shall assess the supply of and current markets for timber on and other materials in privately owned land in close proximity to state land to determine

- (1) the timber and other materials that should be offered for sale; and
- (2) the terms of sale of the timber or other materials.

(b) The timber receipts account is established in the state treasury. The revenue from the sale of timber from state lands shall be deposited in the timber receipts account. The legislature may appropriate money deposited into the timber receipts account for implementation of the state timber disposal program by the department or for any other public purpose. (§ 1 art VI ch 169 SLA 1959; am § 31 ch 152 SLA 1984; am § 4 ch 63 SLA 2000)

**Sec. 38.05.112. Forest land use plans.** (a) The department may not authorize the harvest of timber, except for harvests of 10 acres or less or timber salvaged from land cleared for a nonforest use, until a site-specific forest land use plan has been adopted. A forest land use plan is required whether or not a regional or area land use plan under AS 38.04.065 (a) or a forest management plan under AS 41.17.230 has been adopted. The requirements of AS 38.04.065(b) shall apply to a land use plan adopted under this section only if a regional or area land use plan under AS 38.04.065(a) or a forest management plan under AS 41.17.230 has not been adopted.

(b) In adopting a forest land use plan, the commissioner shall consider the best available data, including information provided by other agencies.

(c) [Repealed, and reenacted to read:] In adopting a forest land use plan on lands not covered by a forest management plan under AS 41.17.230, the commissioner shall consider non-timber uses and resources within the sale area.

(d) [Repealed, Sec. 12 ch 122 SLA 1996]. (§ 1 ch 34 SLA 1990; am § 1-3, 12 ch 1122 SLA 1996; am §§ 1-3 ch 153 SLA 2003)

**Sec. 38.05.113. Five-year sale schedule.** (a) Every two years, the department shall prepare a five-year schedule of timber sales planned on all land managed by the department. The timber sale schedule must provide a time line that identifies timber sales, their volumes, and their locations and must contain sufficient information to provide the public and the forest products industry with a basis to comment on proposed sale offerings.

(b) Except as provided in (c) of this section, a proposed sale may not be held unless it has been included in one of the two five-year schedules immediately preceding the sale.

(c) Sales of 160 acres or less and emergency sales are exempt from the requirements of this section.

(d) [Repealed]. (§ 1 ch 34 SLA 1990; am §§ 4,5, ch 122 SLA 1996; am §§ 4,5,16 ch 153 SLA 2003)

**Sec. 38.05.115. Limitations and conditions of sale.** (a) The commissioner shall determine the timber and other materials to be sold, and the limitations, conditions and terms of sale. The limitations, conditions and terms shall include the utilization, development and maintenance of the sustained yield principle, subject to preference among other beneficial uses. The commissioner may negotiate sales of timber or materials without advertisement and on the limitations, conditions, and terms that are considered to be in the best interests of the state. Within a one-year period, the commissioner may not negotiate a sale without advertisement to the same purchaser of

- (1) more than 500 M.B.M. or equivalent other measure of timber;
- (2) except as provided in (3) of this section, more than 25,000 cubic yards of materials; or
- (3) more than 100,000 cubic yards of materials to a common carrier holding a lease under AS 38.35.

(b) Negotiated sales not exceeding 50 M.B.M. or the equivalent other measure of timber or 2,500 cubic yards of materials are exempt from the provisions of AS 34.15.150 [*execution of conveyances*].

(c) The limitations of this section are not applicable to timber which becomes state property under the provisions of AS 45.50.210 - 45.50.235 [*beach logs*]. (§ 2 art VI ch 169 SLA 1959; am § 1 ch 66 SLA 1969; am § 9 ch 257 SLA 1976; am §§ 2,3 ch 73 SLA 1978; am § 32 ch 152 SLA 1984; am § 1 ch 119 SLA 1986)

**Sec. 38.05.117. Salvage sales.** Notwithstanding the provisions of AS 38.05.113 [*FYSTS*], the commissioner, after making a written finding that the disposal will serve the best interests of the state, may offer for salvage sale timber stands that will lose substantial economic value because of insect or disease epidemics or fire, if not salvaged within two years. Timber on land to be cleared for conversion to nonforest uses also may be offered as a salvage sale. (§ 1 ch 6 SLA 1995)

**Sec. 38.05.118. Negotiated sales.** (a) Notwithstanding any other provision of AS 38.05.110 - 38.05.120, the commissioner may negotiate a sale of timber to a local manufacturer at appraised value. The period of a contract for a sale of timber negotiated under this section may not exceed 25 years. The contract shall provide that the appraised value of timber remaining to be harvested under the provisions of the contract shall be redetermined at least once every five years.

(b) Notice of intent to negotiate a contract authorized by (a) of this section shall be given in accordance with AS 38.05.945.

(c) A sale of timber may not be negotiated by the commissioner under this section except on a finding that, within an area proximate to the business site that the manufacturer may economically serve, there exists, or will exist within two years,

- (1) a high level of local unemployment;
- (2) an underutilized timber manufacturing capacity; and
- (3) an underutilized allowable cut of state timber, timber that will lose substantial economic value due to insects, disease, or fire, or timber to be

cleared for the conversion of land to nonforest uses. (§ 4 ch 73 SLA 1978; am § 101 ch 6 SLA 1984; am §§ 33, 34 ch 152 SLA 1984; am § 2 ch 6 SLA 1995)

**Sec. 38.05.120. Disposal procedure.** Timber and other materials shall be sold either by sealed bids or public auction, depending on which method is determined by the commissioner to be in the best interests of the state, to the highest qualified bidder as determined by the commissioner. An aggrieved bidder may appeal to the commissioner within five days after the sale for a review of the determination. The sale shall be conducted by the commissioner, and at the time of sale the successful bidder shall deposit the amount specified in the terms of sale. The means by which the amount of deposit is determined shall be prescribed by appropriate regulation. The commissioner shall immediately issue a receipt containing a description of the timber or materials purchased, the price bid, and the terms of sale. The receipt shall be accepted in writing by the bidder. A contract of sale, on a form approved by the attorney general, shall be signed by the purchaser and the contract shall be signed by the commissioner on behalf of the state. The commissioner may impose conditions, limitations, and terms considered necessary and proper to protect the interests of the state. Violation of any provision of this chapter or the terms of the contract of sale subjects the purchaser to appropriate legal action. (§ 3 art VI ch 169 SLA 1959; am § 13 ch 61 SLA 1960; am § 3 ch 137 SLA 1962; am § 1 ch 200 SLA 1970; am § 35 ch 152 SLA 1984)

**Sec. 38.05.123. Negotiated timber sales for local manufacture of wood products.**

(a) Notwithstanding the provisions of AS 38.05.115 and 38.05.120, and upon a finding that the sale is in the best interest of the state, the commissioner may negotiate a sale of timber for use in the local manufacture of high value-added wood products. A timber sale contract entered into under this section may provide for a harvest of up to 10,000,000 board feet of timber each year, consistent with sustained yield principles, and may be for a term of up to 10 years. Initial stumpage rates for a contract under this section shall be determined by negotiation but may not be less than the base price for the area as established under regulations adopted by the commissioner. A contract under this section must provide that stumpage rates shall be redetermined by negotiation at least once every three years during the term of the contract, to reflect changes in market conditions; the redetermined rates may not be less than the base price for the area as established under regulations adopted by the commissioner. The commissioner shall by regulation set a maximum number of contracts, but not less than two, per region of the state that may be negotiated each year under this section.

(b) Notice of intent to negotiate a contract under this section shall be given in accordance with AS 38.05.945.

(c) The commissioner may negotiate a sale of timber under this section if the prospective purchaser agrees to use to the maximum extent commercially practicable the timber subject to the sale for the local manufacture of high value-added wood products. The commissioner shall determine the maximum amount of the timber being sold that is commercially practicable to use for those purposes and

make the use of that percentage of the timber for those purposes a term of the contract. In evaluating proposals, the commissioner shall take into account the proposed manufacture of other value-added wood products to be produced under a negotiated contract.

(d) Before a sale may be negotiated under this section,

- (1) the area of the sale must be designated for forestry purposes or other purposes that permit forestry uses by a valid existing area plan adopted under AS 38.04; and
- (2) the requirements of AS 38.05.112 [*FLUP*] and 38.05.113 [*FYSTS*] must be met.

(e) In making the best interest finding required by AS 38.05.035 (e) and this section, the commissioner shall consider, in addition to other factors,

- (1) the direct economic benefit from the local manufacture of high value-added wood products as a result of the sale;
- (2) the direct economic benefit from other local processing of the timber to be undertaken by the purchaser as a result of the sale, including the manufacture of other value-added wood products in addition to high value-added wood products;
- (3) the likelihood of commercial success of the locally manufactured high value-added wood products and other value-added wood products;
- (4) the extent to which the sale is likely to result in the creation and maintenance of a stable local job base;
- (5) the existence of adequate protection measures to ensure the sustainability of fish and wildlife habitat and populations and continuation of other uses of the area subject to the negotiated sale;
- (6) the stumpage return to the state; and
- (7) any other reasonably foreseeable benefits to the state and local economies from the sale.

(f) As part of the timber sale negotiations authorized by this section, the commissioner may require a prospective purchaser negotiating a timber sale contract to submit financial and technical data that demonstrates that the requirements of this section have been or will be met. Upon the prospective purchaser's request, the commissioner shall keep data provided by the purchaser confidential in accordance with the requirements of AS 38.05.035 (a)(9).

(g) If the commissioner determines that additional analysis is necessary in order to complete the best interest finding for a sale under this section, the commissioner may require the prospective purchaser to retain and pay for the services of a contractor to assist the commissioner in evaluating the proposed negotiated sale and financial and technical data relating to the proposed sale. The contractor shall be selected by the prospective purchaser from a list of consultants in forestry and timber economics provided by the commissioner. If the commissioner requires a prospective purchaser to retain the services of a contractor under this subsection, the commissioner shall determine the scope of the work to be performed by the contractor.

(h) Under this section, a performance review shall be completed not more than five years after a timber sale contract is entered into by the department to ensure that the

purchaser is performing in accordance with the terms of the contract. If the commissioner determines that the purchaser is not performing in accordance with the contract, the commissioner may terminate the contract.

(i) A timber sale negotiated under this section does not affect other timber harvest programs under AS 38.05.110 - 38.05.120.

(j) In this section,

(1) "high value-added wood product" means interior finish paneling, trim molding, flooring, doors, windows, cabinet stock, furniture, musical instruments or parts of instruments, toys, tools and implements, ready-to-assemble building kits, veneer, plywood, finger-jointed lumber, faced house logs, dissolving pulp, engineered wood products, paneled wood products, kiln-dried lumber, and other similar finished wood products as determined by the commissioner to have received processing beyond sawing and planing that adds high value to the wood product;

(2) "other value-added wood product" means round house logs, chips, green lumber, flitches, cants, rough planks, and other similar wood products as determined by the commissioner. (§ 2 ch 124 SLA 1996; am §§ 6,7 ch 153 SLA 2003)

**Sec. 38.05.300. Classification of land.** (a) The commissioner shall classify for surface use land in areas considered necessary and proper. This section does not prevent reclassification of land where the public interest warrants reclassification, nor does it preclude multiple purpose use of land whenever different uses are compatible. If the area involved contains more than 640 contiguous acres, state land, water, or land and water area may not, except by act of the state legislature, (1) be closed to multiple purpose use, or (2) be otherwise classified by the commissioner so that mining, mineral entry or location, mineral prospecting, or mineral leasing is precluded or is designated an incompatible use, except when the classification is necessary for a land disposal or exchange or is for the development of utility or transportation corridors or projects or similar projects or infrastructure, or except as allowed under (c) of this section.

(b) repealed

(c) Notwithstanding (a)(2) of this section, if the commissioner considers it necessary and proper, the commissioner may provide by order for an interim classification that precludes, or designates as an incompatible use, mining, mineral entry or location, mineral prospecting, or mineral leasing. Within 10 days after the convening of each regular legislative session, the commissioner shall transmit to the legislature for consideration all the interim classification orders issued under this subsection during the preceding calendar year. Unless the legislature approves by law an interim classification contained in an order transmitted under this subsection, that order expires of the 90<sup>th</sup> day of that legislative session or upon adjournment of that session, whichever occurs first. Approval by the legislature of an interim classification satisfies the requirement of (a) of this section for an act of the state legislature. (§ art III ch 169 SLA 1959; am § 2 ch 31 SLA 1964; am § 33 ch 85 SLA 1979; am § 40 ch 152 SLA 1984; am § 2 ch 52 SLA 1993; am § 35 ch 126 SLA 1994)

**Sec. 38.05.810. Public and charitable use.** (a) Except as otherwise provided in AS 38.05.183 (h), the (1) lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision, (2) *[excluded: coal deposits]* (3) sale or other disposal of state land may be made to a tax-exempt, nonprofit corporation, association, club, or society organized and operated for the management of a cemetery or a solid waste or other public facility, or (4) sale or other disposal of land within a state subdivision may be made to that subdivision's nonprofit, tax-exempt homeowners' association, for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the applicant, and of the terms of the grant under which the land was acquired by the state. The commissioner shall ensure, by regulation, deed restriction, covenant, or otherwise, that disposals of land under this subsection serve a public purpose and are in the public interest. *[Note: see AS 38.05.965 for definition of state land. It includes "resources belonging to or acquired by the state..." ]*

(b) *[excluded: leasing land]*

(c) Eligible applicants under (b) - (d) of this section are limited to nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes, or for the promotion of social welfare, if the project for which the land is desired conforms to those objectives and not commercial development. No lease of land may be granted under this section for a project closed to the use and enjoyment of the general public. In every case the applicant shall submit evidence that it is exempt from payment of federal income tax. As a condition of and in consideration of the rights acquired under a lease granted under (b) - (d) of this section, each eligible organization and its parent or subsidiary organizations shall (1) maintain and preserve books, accounts, and records that the director prescribes by regulation as necessary and appropriate; and (2) accord at all reasonable times to the state and its authorized agents and auditors the right of access to those books, accounts and records for the purpose of inspecting, examining and copying them. Any information provided the state in the course of an audit becomes a matter of public record.

(d) *[excluded: leasing land]*

(e) The lease, sale, or other disposal of state land at appraised fair market value may be negotiated with a licensed public utility or a licensed common carrier by the director with the approval of the commissioner if the utility or carrier reasonably requires the land for the conduct of its business under its license.

(f) *[excluded: leasing land]*

(g) The commissioner shall retain a reversionary interest on each sale or other disposal granted under (a) or (e) of this section. The commissioner may waive the reversionary interest on a written determination that the waiver is in the public interest.

(h) *[excluded: Alaska Aerospace Development]*

(i) *[excluded: leasing land]*



(§ 4 art III ch 169 SLA 1959; am § 1 ch 155 SLA 1960; am § 1 ch 137 SLA 1962; am § 1 ch 36 SLA 1976; am § 12 ch 257 SLA 1976; am § 4 ch 55 SLA 1986; am § 11 ch 75 SLA 1987; am § 1 ch 54 SLA 1991; am § 24 ch 91 SLA 1997; am § 11 ch 22 SLA 2001)

**Sec. 38.05.850. Permits.** (a) The director, without the prior approval of the commissioner, may issue permits, rights-of-way, or easements on state land for roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35 [*Right-of-way Leasing Act*], telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent land under valid lease, and other similar uses or improvements, or revocable, nonexclusive permits for the personal or commercial use or removal of resources that the director has determined to be of limited value. The commissioner, upon recommendation of the director, shall establish a reasonable rate or fee schedule to be charged for these uses, subject to the exception for nonprofit cooperative associations specified in (b) of this section. In the granting, suspension, or revocation of a permit or easement of land, the director shall give preference to that use of the land that will be of greatest economic benefit to the state and the development of its resources. However, first preference shall be granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, that is seaward of the upland property of the upland owner and that is needed by the upland owner for any of the purposes for which the use may be granted.

(b) The fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for a transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interests of the state.

(c) If the director determines, by evaluation of the nature and duration of the intended use, that an easement or right-of-way issued under this section will not be functionally revocable, the director shall provide public notice before issuing the easement or right-of-way. (§ 7 art III ch 169 SLA 1959; am § 7 ch 61 SLA 1960; am § 4 ch 72 SLA 1972; am § 28 ch 3 FSSLA 1973; am § 13 ch 257 SLA 1976; am §§ 1,2 ch 25 SLA 1979; am § 26 ch 91 SLA 1997; am § 4 ch 27 SLA 2000)

**Sec. 38.05.945. Notice.**

(a) This section establishes the requirements for notice given by the department for the following actions:

- (1) classification or reclassification of state land under AS 38.05.300 and the closing of land to mineral leasing or entry under AS 38.05.185;
- (2) zoning of land under applicable law;
- (3) issuance of a

- (A) preliminary written finding under AS 38.05.035 (e)(5)(A) regarding the sale, lease, or disposal of an interest in state land or resources for oil and gas, or for gas only, subject to AS 38.05.180 (b);
  - (B) written finding for the sale, lease, or disposal of an interest in state land or resources under AS 38.05.035 (e)(6), except a lease sale described in AS 38.05.035 (e)(6)(F) for which the director must provide opportunity for public comment under the provisions of that subparagraph;
  - (4) a competitive disposal of an interest in state land or resources after final decision under AS 38.05.035 (e);
  - (5) a preliminary finding under AS 38.05.035 (e) concerning sites for aquatic farms and related hatcheries;
  - (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale, lease, or disposal of an interest in state land or resources.
- (b) When notice is required to be given under this section,
- (1) the notice must contain sufficient information in commonly understood terms to inform the public of the nature of the action and the opportunity of the public to comment on it;
  - (2) *[Excluded: pertains only to oil and gas]*
  - (3) if the notice is of an action described in (a) of this section, other than notice of an action under (a)(3)(A) *[oil and gas]* of this section, the department shall give notice at least 30 days before the action by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action and one or more of the following methods:
    - (A) publication through public service announcements on the electronic media serving the area affected by the action;
    - (B) posting in a conspicuous location in the vicinity of the action;
    - (C) notification of parties known or likely to be affected by the action; or
    - (D) another method calculated to reach affected persons.
- (c) Notice at least 30 days before action under (a) of this section shall also be given to the following:
- (1) to a municipality if the land is within the boundaries of the municipality, to a coordinating body established by community councils in a municipality if the coordinating body or a community council within the area served by a coordinating body requests notice in writing: if there is no coordinating body within the municipality, notice shall be provided to each community council established by the charter or ordinance of the municipality if the land is located within the boundaries of the municipality and if the community council requests notice in writing;
  - (2) to a regional corporation if the boundaries of the corporation as established by 43 U.S.C. 1606(a) (sec. 7(a), Alaska Native Claims Settlement Act) encompass the land and the land is outside a municipality;
  - (3) to a village corporation organized under 43 U.S.C. 1607(a) (sec. 8(a), Alaska Native Claims Settlement Act) if the land is within 25 miles of the village for which the corporation was established and the land is located outside a municipality;

- (4) to the postmaster of a permanent settlement of more than 25 persons located within 25 miles of the land if the land is located outside a municipality, with a request that the notice be posted in a conspicuous location;
- (5) to a nonprofit community organization or a governing body that has requested notification in writing and provided a map of its boundaries, if the land is within the boundaries.
- (d) *[Excluded: pertains only to aquatic farms and related hatcheries]*
- (e) Notice is not required under this section for a permit or other authorization revocable by the department.
- (f) The provisions of this section do not apply to a lease issued under AS 38.05.205 *[Mining leasing]*.
- (g) *[Repealed, Sec. 19 ch 56 SLA 1997].*
- (h) Failure to give notice under this section to a community council, a coordinating body established by community council, or an organization listed in (c)(5) of this section does not constitute a legal basis for invalidation or delay of the action. (§ 10 art III ch 169 SLA 1959; am § 8 ch 61 SLA 1960; am § 2 ch 74 SLA 1961; am § 3 ch 117 SLA 1976; am § 14 ch 257 SLA 1976; am §§ 39, 40 ch 85 SLA 1979; am § 4 ch 108 SLA 1981; am § 36 ch 113 SLA 1981; am § 3 ch 87 SLA 1982; am §§ 44-46 ch 152 SLA 1984; am §§ 6,7 ch 100 SLA 1988; am §§ 15,16 ch 145 SLA 1988; am § 5 ch 124 SLA 1990; am § 7 ch 35 SLA 1994; am §§ 6,7 ch 38 SLA 1994; am § 5 ch 138 SLA 1996; am §§ 17,19 ch 56 SLA 1997; am §§ 27, 28 ch 91 SLA 1997; am § 4 ch 118 SLA 2000; am § 44 ch 49 SLA 2004)

**Sec. 38.05.965. Definitions.** *[This section includes only those definitions used in the portions of AS 38 included in this booklet.]* In this chapter, unless the context otherwise requires,

- (3) "commissioner" means the commissioner of natural resources;
- (4) "department" means the Department of Natural Resources;
- (5) "director" means the director of the division of lands of the Department of Natural Resources;
- (10) "material" includes sand, stone, gravel, pumice, and common clay.
- (12) "multiple use" has the meaning given in AS 38.04.910;
- (13) "navigable water" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;
- (18) "public water" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest;
- (20) "shoreland" means land belonging to the state which is covered by nontidal water that is navigable under the laws of the United States up to ordinary high water mark as modified by accretion, erosion, or reliction;

- (21) "state land" or "land" means all land, including shore, tide and submerged land, or resources belonging to or acquired by the state;
- (22) "submerged land" means land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or further as may hereafter be properly claimed by the state;
- (23) "tideland" means land that is periodically covered by tidal water between the elevation of mean high water and mean low water;
- (24) "timber land" means state land chiefly valuable for timber and other forest products.
- (25) "university land"
- (A) means
- (i) all sections 33 reserved to the university under the Act of March 4, 1915, 38 State. 1214, as amended;
- (ii) all land granted to or reserved for the benefit of the university that retains its designation as university land;
- (iii) all other land owned in fee by the University of Alaska including land transferred in fee to the Board of Regents of the University of Alaska to replace land formerly designated as university land;
- (B) does not include former university land that has been conveyed to the department under the settlement approved by the legislature in ch. 22, SLA 1983. (§ 2 art I ch 169 SLA 1959; am § 4 ch 117 SLA 1976; am § 47 ch 152 SLA 1984; am § 45 ch 50 SLA 1989; am §§ 35, 36 ch 30 SLA 1992; am § 45 ch 49 SLA 2004)

## **Title 41. Public Resources**

### **Chapter 41.15. Forests**

#### **Article 1. Protection of forested land**

**Sec. 41.15.010. Intent.** It is the intent of AS 41.15.010 - 41.15.170 to provide protection from wildland fire and other destructive agents, commensurate with the values at risk, on land that is owned privately, by the state, or by a municipality. (§ 1 ch 138 SLA 1961; am § 1 ch 88 SLA 1984, am § 3 ch 22 SLA 2008)

**Sec. 41.15.020. Regulations.** The commissioner shall, by regulation, make provision for the protection of forested land in the state from fire and other destructive agents. (§ 2 ch 138 SLA 1961)

**Sec. 41.15.025. Fire protection on mental health trust land.** Land that is in the mental health trust is, for the purpose of wild fire suppression, land owned by the state. (§ 14 ch 66 SLA 1991)

#### **Sec. 41.15.030. Contracts for forest protection; emergency fire-fighters.**

- (a) The commissioner may enter into necessary protection contracts.
- (b) The commissioner may hire emergency fire-fighting personnel, and shall establish classifications and rates of pay for the emergency fire-fighting personnel consistent with the compensation paid by other fire-fighting agencies. The commissioner may adjust the classifications and rates based on findings of the

federal Bureau of Land Management for Alaska. The commissioner may assign emergency fire-fighting personnel to conduct fire suppression, hazard reduction, fire prevention, habitat restoration or improvement, and other related activities in emergency and nonemergency circumstances. The assignment of emergency fire-fighting personnel to nonemergency activities may not be used to replace permanent or seasonal state employees. The commissioner may not use appropriations to the department from state general funds for emergency fire-fighting personnel engaged in nonemergency activities under this section. (§ 2 ch 138 SLA 1961; am § 1 ch 100 SLA 1976; am § 2 ch 88 SLA 1984; am § 2 ch 121 SLA 1996)

**Sec. 41.15.040. Right of entry to control and suppress fires.** Upon approval by the commissioner or an authorized agent, an employee of the division of lands, or of any organization authorized to prevent, control, or suppress fire or a destructive agents, and others assisting in the control or suppression of a fire upon request of an officer or employee of the United States or the state may at any time enter upon any land, whether publicly or privately owned, for the purpose of preventing, suppressing, or controlling a wildland fire or a destructive agents. (§ 2 ch 138 SLA 1961, am § 4 ch 22 SLA 2008)

**Sec. 41.15.045. Civil immunity.** (a) Notwithstanding other provision of law, a person may not bring a civil action for damages for death, personal injury, or property damage that results from an act or omission in performing or failing to perform activities or duties arising out of prevention, monitoring, control or suppression of fires authorized to be performed under AS 41.15.010—41.15.170 against

- (1) the state or its officers, agents, and employees;
- (2) a political subdivision of the state or its officers, agents, and employees;
- (3) any organization authorized to prevent, control, or suppress fires; or
- (4) others assisting in the control or suppression of fires at the request of an officer or employee of the United States or the state.

(b) This section does not apply to a civil action for damages as a result of intentional misconduct within the course and scope of employment or agency and with complete disregard for the safety and property of others. (§ 11 ch 43 SLA 2003)

**Sec. 41.15.050. Fire season.** The period from April 1 to August 31, inclusive, of each year is designated the fire season. The commissioner may designate other periods as fire season. The commissioner may proclaim an additional period for all or any portion of the state when weather or other conditions require action for the protection of forested land. The commissioner may also, during the fire season, prohibit, or allow only by permit, the setting of fires, smoking, entry, or other use on the land, when, in the judgment of the commissioner, the activities would unduly increase the fire danger. (§ 3 ch 138 SLA 1961; am § 1 ch 27 SLA 1973; am § 1 ch 21 SLA 2006)

**Sec. 41.15.060. Permits.** The commissioner shall, by regulation, prescribe the conditions of and the manner for obtaining a permit. Failure to obtain the required permit, or violation of a condition of the permit is a misdemeanor. (§ 3 ch 138 SLA 1961; am § 1 ch 179 SLA 1970)

**Sec. 41.15.070. Disposal of burning materials.** A person who, during the fire season, throws away lighted tobacco, cigar, cigarette, match, firecracker, or other burning material on forested land, whether public or private, is guilty of a misdemeanor. (§ 4 ch 138 SLA 1961)

**Sec. 41.15.080. Equipment and notice required.** A conveyance operated through or above forested land shall be equipped at all times in each compartment with a suitable receptacle for the disposition or reception of burning material mentioned in AS 41.15.070 . The owner or operator of a public conveyance operated through or above forested land shall post and keep displayed at all times a copy of AS 41.15.050 - 41.15.080 and 41.15.140 in a conspicuous place within the smoking compartment of the conveyance. A person owning or operating a sawmill or logging camp or other commercial plant or operation in forested land shall post and keep displayed at all times a copy of AS 41.15.050 - 41.15.080 and 41.15.140 in a conspicuous place upon the building or ground of the milling, logging or commercial operation. A person may not deface or destroy the notices required under this section. A violation of this section is a misdemeanor.

**Sec. 41.15.090. Building or leaving fires.** A person who builds a fire in or near timber, brush, grass, or other inflammable material without first clearing the ground immediately around it free from materials that will carry fire or who leaves the fire before totally extinguishing it, is guilty of a misdemeanor.

**Sec. 41.15.100. Setting fires without consent.** A person who sets on fire timber, brush, grass, or other inflammable material located or growing on land that is not owned, possessed, or controlled by the person, without the consent of the owner or lawful occupant of the land, is guilty of a misdemeanor.

**Sec. 41.15.110. Uncontrolled spread of fire; leaving fire unattended.** (a) A person who knows of a fire or sets a fire on forested land owned, possessed, or controlled by the person, shall exercise due care to prevent the uncontrolled spread of the fire. A person failing to exercise due care which results in spread of the fire and damage to property of another is guilty of a misdemeanor.

(b) A person who neglects to make every effort possible to extinguish a fire the person knowingly sets on forested land or who leaves such a fire unattended is guilty of a misdemeanor.

(c) In a criminal action brought under this section, the escape of the fire is presumptive evidence of negligence by the person responsible for starting the fire and unless rebutted is sufficient to sustain a conviction.

**Sec. 41.15.120. Failure to assist in preventing or suppressing fires.** If an officer or employee of the United States or the state who is authorized to prevent or suppress fires requests a person to assist in the prevention or suppression of a fire

and informs the person of the officer or employee's official status, and the person fails to assist the officer or employee in the performance of duties, the person is guilty of a misdemeanor.

**Sec. 41.15.130. Backfires excluded.** AS 41.15.010 - 41.15.170 do not apply to the setting of a backfire under the direction of an officer or employee of the United States or the state who is authorized to prevent or suppress fires.

**Sec. 41.15.140. Penalty for misdemeanor.** A person who is convicted of a misdemeanor under AS 41.15.010 - 41.15.170 is punishable by a fine of not less than \$25 nor more than \$500, or by imprisonment in jail for not less than 10 days nor more than six months, or by both.

**Sec. 41.15.150. Malicious or wanton setting of fires.** A person who maliciously or wantonly sets on fire timber, brush, grass, or other inflammable material located or growing on land that is not owned, possessed, or controlled by the person is guilty of a felony and upon conviction is punishable by a fine of not less than \$100 or not more than \$1,000, or by imprisonment for not less than one year nor more than 10 years, or by both.

**Sec. 41.15.160. Double damages in civil actions.** In addition to the criminal punishment provided for by AS 41.15.010 - 41.15.170, the United States, the state, a municipality, or any person may recover in a civil action double the amount of damages sustained as a consequence of a violation of AS 41.15.010 - 41.15.170. In a civil action brought under AS 41.15.010 - 41.15.170 or any other law relating to the subject matter of AS 41.15.010 - 41.15.170, the escape of a fire is presumptive evidence of negligence by the person responsible for starting the fire and unless rebutted is sufficient to sustain the recovery.

**Sec. 41.15.170. Definitions.** In AS 41.15.010 - 41.15.170

(1) "damages" includes costs incurred in suppressing, controlling, or extinguishing a fire;

(2) "destructive agent" means an insect, pathogen, or other environmental agent that causes damage to a forest resource;

(3) "forested land" includes all land on which grass, brush, timber, and other natural vegetative material grows;

(4) "wildland fire" includes the uncontrolled burning of grass, brush, timber, and other natural vegetative material. (§ 1 ch 138 SLA 1961; am § 3 ch 179 SLA 1970; am § 43 ch 85 SLA 1988, am § 5 ch 22 SLA 2008)

[**Note:** AS 41.15.180 is Article 2. Forest Reserve Fund addressing disbursement of national forest income to communities.]

### **Article 3. Fire Suppression Fund.**

**Sec. 41.15.200. Statement of purpose.** The purpose of AS 41.15.200 - 41.15.230 is to provide a readily available fund for the payment of expenses incurred by the department in suppressing fires. (§ 1 ch 10 SLA 1978)

**Sec. 41.15.210. Fire suppression fund.** A fire suppression fund is established in the state treasury for the use of the department. The fund shall be used for actual expenses incurred in the suppression of fires. The fund may not be used

- (1) for capital expenditures; or
- (2) to fund nonemergency activities of emergency fire-fighting personnel under AS 41.15.030. (§ 1 ch 10 SLA 1978; am § 1 ch 30 SLA 1982; am § 3 ch 121 SLA 1996)

**Sec. 41.15.220. Composition of fund.** The legislature may appropriate from the following sources to the fire suppression fund:

- (1) money received in settlement of a claim or loss caused by damage as a consequence of a violation of AS 41.15.010 - 41.15.170;
- (2) money received from federal, state, or other governmental unit, or from a private donor for actual fire suppression work;
- (3) money received from other sources as the legislature may consider appropriate and necessary to satisfy the purpose of the fund. (§ 1 ch 10 SLA 1978)

**Sec. 41.15.230. Disbursement.** Upon authorization of the governor, disbursements from the fire suppression fund shall be paid by the proper state officer on presentation of vouchers signed by the governor or the governor's authorized representative. (§ 1 ch 10 SLA 1978)

**Sec. 41.15.240. Records of fire suppression fund.** The department shall maintain accounting records showing the income and expenses of the fire suppression fund. (§ 1 ch 10 SLA 1978; am § 16 ch 126 SLA 1994)

#### **Article 4. Haines State Forest Resource Management Area**

**Sec. 41.15.300. Haines State Forest Resource Management Area.** (a) The purpose of AS 41.15.300 - 41.15.330 is to establish the land and water presently owned by the state and all land and water acquired in the future by the state lying within the boundaries described in AS 41.15.305(a) as the Haines State Forest Resource Management Area. The primary purposes for the establishment of the Haines State Forest Resource Management Area are the utilization, perpetuation, conservation, and production of the land and water including but not limited to the use of renewable and nonrenewable resources through multiple-use management and the continuation of other beneficial uses including traditional uses and other recreational activities.

(b) The responsibility for the management, control, development, and maintenance of the Haines State Forest Resource Management Area established under AS 41.15.300 - 41.15.330 is assigned to the department. (§ 2 ch 95 SLA 1982)

**Sec. 41.15.305. Establishment and boundaries.** (a) Subject to valid existing rights, the land and water presently owned by the state and all land and water



acquired in the future by the state lying within the following described parcels are designated as the Haines State Forest Resource Management Area: [*Legal description excluded*].

(b) Private land, University of Alaska grant land, existing transportation corridors, and borough selections within the Haines State Forest Resource Management Area are excluded from the Haines State Forest Resource Management Area. The commissioner may not acquire private land or University of Alaska grant land located within the Haines State Forest Resource Management Area by eminent domain for any purpose.

(c) Approved or pending Native allotment applications located partially or completely within the Haines State Forest Resource Management Area are not adversely affected by the establishment of the Haines State Forest Resource Management Area and all approved allotments and all pending allotments shall be treated as private land. (§ 2 ch 95 SLA 1982)

**Sec. 41.15.310. Coordinated management.** (a) The division of forestry shall consult with the division of parks, the Department of Fish and Game, including each local fish and game advisory committee with jurisdiction in the area, and the Alaska Chilkat Bald Eagle Preserve Advisory Council to promote effective, efficient, and coordinated administration of the Haines State Forest Resource Management Area and the Alaska Chilkat Bald Eagle Preserve for the values for which each is established.

(b) Resource studies undertaken by the department shall be designed to benefit the management and administration of the Haines State Forest Resource Management Area and the Alaska Chilkat Bald Eagle Preserve. (§ 2 ch 95 SLA 1982)

**Sec. 41.15.315. Multiple-use management.** (a) The Haines State Forest Resource Management Area shall be managed under the principles of multiple use and sustained yield and under AS 41.17.

(b) The Department of Fish and Game is responsible for the management of fish and game resources in the Haines State Forest Resource Management Area under applicable law and in a manner consistent with AS 41.15.300 - 41.15.330 except that an opportunity for continued traditional use of the Haines State Forest Resource Management Area at levels and by traditional methods and means is guaranteed. The traditionally compatible uses include but are not limited to fishing, hunting, trapping, berry picking, subsistence, and recreational uses, operation of motorized vehicles, and the harvest of personal-use firewood.

(c) The control of highway access within the Haines State Forest Resource Management Area is the responsibility of the department except that the Department of Transportation and Public Facilities is responsible for the repair and maintenance of public roads in the Haines State Forest Resource Management Area.

(d) The state land and water described in AS 41.15.305 (a) are closed to sale under state land disposal laws. The commissioner may lease the land described in AS 41.15.305 (a) under AS 38.05.070 - 38.05.105 for a purpose consistent with AS 41.15.300 (a) and a municipality may select land in the Haines State Forest

Resource Management Area under law. (§ 2 ch 95 SLA 1982, am § 8 ch 153 SLA 2003)

**Sec. 41.15.320. Management plan and regulations.** [Repealed and reenacted to read:] In adopting a forest management plan for the Haines State Forest Resource Management Area under AS 41.17.230, the department shall consult with the Department of Fish and Game and the governing bodies of each municipality in the general area. The Department of Fish and Game shall consult with the department and local fish and game advisory committees, if any, before adopting regulations governing fish and wildlife management in the Haines State Forest Resource Management Area. Regulations may not be adopted by either department without prior review at a public hearing in Haines and Klukwan. (§ 2 ch 95 SLA 1982; am § 9 ch 153 SLA 2003)

**Sec. 41.15.325. Cooperative management agreements.** The department may enter into cooperative management agreements with a person who holds title to or has a valid entry on land within or adjoining the boundaries of the Haines State Forest Resource Management Area. (§ 2 ch 95 SLA 1982)

**Sec. 41.15.330. Existing rights.** The establishment of the Haines State Forest Resource Management Area does not affect the terms and conditions of an existing permit or contract involving use of the land, water, or other resources of the Haines State Forest Resource Management Area. (§ 2 ch 95 SLA 1982)

## **Article 5. Miscellaneous Provisions**

**Sec. 41.15.900. Observance of Arbor Day.** To increase public awareness of the vital importance of the conservation and propagation of trees and forests to the everyday life of the citizens of Alaska, the thirds Monday in May of each year is designated “Arbor Day.” It shall be observed by appropriate school assemblies and programs and shall be the occasion of other suitable observances and exercises by civic groups and the public in general. (§ 1 ch 11 SLA 1988; am § 1 ch 15 SLA 1973)

## **Chapter 35. Historic Preservation**

### **Article 1. Alaska Historic Preservation Act**

**Sec. 41.35.010. Declaration of policy.** It is the policy of the state to preserve and protect the historic, prehistoric, and archeological resources of Alaska from loss, desecration, and destruction so that the scientific, historic, and cultural heritage embodied in these resources may pass undiminished to future generations. To this end, the legislature finds and declares that the historic, prehistoric, and archeological resources of the state are properly the subject of concerted and coordinated efforts exercised on behalf of the general welfare of the public in order

that these resources may be located, preserved, studied, exhibited, and evaluated. (§ 1 ch 130 SLA 1971)

**Sec. 41.35.070. Preservation of historic, prehistoric, and archeological**

**resources threatened by public construction.** (a) The department shall locate, identify, and preserve in suitable records information regarding historic, prehistoric, and archeological sites, locations and remains. The information shall be submitted to the heads of the executive departments of the state.

(b) Before public construction or public improvement of any nature is undertaken by the state, or by a governmental agency of the state or by a private person under contract with or licensed by the state or governmental agency of the state, the department may survey the affected area to determine if the area contains historic, prehistoric, or archeological values.

(c) If the department determines that historic, prehistoric, or archeological sites, locations or remains will be adversely affected by the public construction or improvement, the proposed public construction or improvement may not be commenced until the department has performed the necessary investigation, recording, and salvage of the site, location or remains. All investigation, recording, and salvage work shall be performed as expeditiously as possible so that no state construction project will be unduly impaired, impeded or delayed.

(d) If in the course of performing public construction or improvements, historic, prehistoric, or archeological sites, locations, remains, or objects are discovered, the department shall be notified and its concurrence shall be requested in continuing the construction or improvement. Upon receipt of this notice, the department shall survey the area to determine whether the area contains historic, prehistoric, or archeological data which should be preserved in the public interest. The survey shall be conducted as expeditiously as possible. If, as a result of the survey, it is determined that (1) this data exists in the area, (2) the data has exceptional historic, prehistoric, or archeological significance, and should be collected and preserved in the public interest, and (3) it is feasible to collect and preserve the data, the department shall perform the necessary work to collect and preserve the data. This work shall be performed as expeditiously as possible.

(e) If the concurrence of the department required under (b) and (c) of this section is not obtained after 90 days from the filing of a request for its concurrence to proceed with the project, the agency or person performing the construction or improvement may apply to the governor for permission to proceed without that concurrence and the governor may take the action the governor considers best in overruling or sustaining the department.

(f) The costs of investigation, recording and salvage of the site shall be reimbursed by the agency sponsoring the construction project.

(g) Notwithstanding (a) - (f) of this section, all actions to stop any project shall first be approved in writing by the commissioner. (§ 1 ch 130 SLA 1971; am § 1 ch 112 SLA 1974)

**Title 44. State Government**

**Chapter 44.37. Department of Natural Resources**

**Sec. 44.37.040. Duties of department with respect to historic preservation and archeology.** The Department of Natural Resources shall

- (1) sponsor, engage in, and direct fundamental research into the archeology of the state and encourage and coordinate archeological research and investigation undertaken in the state;
- (2) cooperate with the Alaska Historical Commission in performing their functions under AS 41.35;
- (3) ensure that historic, prehistoric, and archeological resources are properly reported by persons or agencies engaged in public construction work, and protect sites and objects of significance discovered at state sites or discovered during the course of public construction, and encourage the protection of sites and objects discovered during the course of any other construction work;
- (4) investigate reported historic, prehistoric, or archeological resources and appraise them for any future excavation, preservation, and interpretation;
- (5) serve as a central clearinghouse for information on all historic, prehistoric, and archeological resource excavation in the state. (§ 9 ch 112 SLA 1974; am E.O. No. 83 § 16 (1993))

**Title 45. Trade and Commerce**

**Chapter 45.50. Competitive Practices and Regulation of Competition**

**Sec. 45.50.210. Application for registration of distinctive brand.** (a) The owner of timber property that the owner puts or intends to put into a coastal water, lake, river, creek, or other waterway of the state for the purpose of rafting or transporting by floating or towing, shall apply to the department for the exclusive use of a distinctive brand to identify it.

(b) The application shall be in writing and accompanied by an acceptable diagram or design on paper of the proposed brand, and the prescribed fee.

(c) The department shall promptly register the brand and issue a certificate of registration to the applicant granting the applicant the exclusive use of the brand for a period of five years. The department may not register a brand that is so similar in design to one presently registered in the name of another person that one brand is not clearly distinguishable from the other. (§ 1 ch 51 SLA 1953; am § 1 ch 191 SLA 1955; am § 1 ch 168 SLA 1970; am § 1 ch 68 SLA 1975)

**Sec. 45.50.220. Termination and renewal.** The right to the exclusive use of a registered brand ceases at the end of five years from the date of registration. The brand may be renewed by application before expiration, together with the payment of the prescribed fee. Renewals may be made successively for five-year terms. (§ 2 ch 51 SLA 1953; am § 2 ch 168 SLA 1970; am § 2 ch 68 SLA 1975)

**Sec. 45.50.230. Presumption from display.**

(a) Each piece of timber property put or intended to be put in a coastal water, lake, river, creek, or other waterway of the state for the purpose of rafting or transporting by floating or towing shall display upon at least one end the registered brand and is presumed

(1) while in the possession and control of the person in whose name the brand is registered, to be the sole property of that person; and

(2) to be "abandoned property" if, 30 days after the time public notice has expired as provided under AS 45.50.234 or 90 days from the date of reporting required under AS 45.50.232 or from the date of expiration of any extended recovery period under AS 45.50.237 , it is not in the possession and control of the owner or rightful transporter and is

(A) adrift in the water of the state,

(B) stranded on the beaches, marshes, tideland, or shoreland of the water of the state, or

(C) partially or wholly submerged in the water of the state.

(b) [Repealed, Sec. 7 ch 232 SLA 1976]. (§ 3 ch 51 SLA 1953; am § 2 ch 191 SLA 1955; am § 3 ch 168 SLA 1970; am §§ 1, 7 ch 232 SLA 1976)

**Sec. 45.50.232. Reporting of lost logs to the department.** The owner or rightful transporter of timber property not in the possession or control of the owner or transporter, which has become adrift in the waters of the state, stranded on the beaches, marshes, tideland, or shoreland of the water of the state, or partially or wholly submerged in the water of the state, shall report the loss of the timber property within 15 days from the time the loss is discovered to the department, indicating the probable date lost, the place lost, if known, the probable area of recovery, and any other information that the department may require. Unless the time for recovery is extended under AS 45.50.237 , the rightful transporter or owner of timber property has 90 days from the date the loss is reported to recover the timber property. After 90 days from the date of reporting or upon the expiration of any extension granted under AS 45.50.237 , the timber property is considered to be abandoned, notice is not required to be published under AS 45.50.234 , and the timber property is presumed to be the property of the state. (§ 2 ch 232 SLA 1976)

**Sec. 45.50.234. Publication of notice of intent to claim abandoned property.**

Except as provided in AS 45.50.232 , the department shall publish notice of its intent to claim abandoned timber property under AS 45.50.210 - 45.50.325 for not less than 30 days from the date that first notice is published under this section.

Notice shall be published once a week for at least three consecutive weeks in a newspaper of general circulation nearest the area where the timber property is located and, if feasible, posted in a centrally located public place within or in close proximity to the area where the timber property is located. (§ 2 ch 232 SLA 1976)

**Sec. 45.50.235. Ownership of unbranded and abandoned timber property.** (a) Timber property that is unbranded or on which a brand is not distinguishable and that is located in a coastal water, lake, river, creek, or other waterway of the state or on state owned coastline is presumed to be the property of the state. Timber property that is abandoned property as defined in AS 45.50.230 (a)(2) is presumed to be the property of the state 90 days after the period of reporting as required in AS 45.50.232 unless an extension has been granted, or 30 days after the period of notice has expired as provided under AS 45.50.234.

(b) Timber property that becomes state property under the provisions of this section may be sold under terms and conditions established by the director of the division of lands. (§ 4 ch 168 SLA 1970; am § 3 ch 68 SLA 1975; am § 3 ch 232 SLA 1976; am § 5 ch 73 SLA 1978)

**Sec. 45.50.237. Extension of period for recovery of timber property.** The department shall extend the 90-day period for recovery of timber property after reporting specified in AS 45.50.232 if a good faith effort to salvage the timber property is being made by the person requesting the extension. Extensions shall be granted for limited periods only but may be continued until salvage is completed, and guidelines shall be established specifying what constitutes a good faith effort for purposes of extension under regulations adopted by the department. Definition of a good faith effort must include the specification of extraordinary circumstances of weather and tide conditions that may preclude direct and immediate salvage operations. (§ 4 ch 232 SLA 1976)

**Sec. 45.50.240. Property rights in brand.** Each registered brand is the property of the person in whose name it is registered. It is personal property and may be sold, hypothecated, assigned, or otherwise transferred. (§ 4 ch 51 SLA 1953; am § 5 ch 168 SLA 1970)

**Sec. 45.50.250. Recording brand.** The commissioner shall file for record in the department files a true copy of each certificate of registration issued. (§ 5 ch 51 SLA 1953; am § 6 ch 168 SLA 1970; am § 4 ch 68 SLA 1975)

**Sec. 45.50.260. Registration upon transfer.** If a transfer of a brand is made, including transfer by assignment or sale, a true copy of the transfer instrument shall be filed for record with the department. The fee for transfer is as specified by regulation. (§ 5 ch 51 SLA 1953; am § 7 ch 168 SLA 1970; am § 5 ch 68 SLA 1975)

**Sec. 45.50.270. Publication of current list of brands.** The department shall publish a list of brands as of December 31 of each even numbered year. The list must show the design of each brand, the name and address of the owner, the date of registration, and any transfer of a brand during the previous two years. Copies of the list shall be available to the public upon request. (§ 6 ch 51 SLA 1953; am § 8 ch 168 SLA 1970; am § 6 ch 68 SLA 1975)

**Sec. 45.50.280. Certified copies of certificate or transfer instrument.** Upon request and payment of the prescribed fee, the department shall furnish a certified copy of a brand certificate of registration or a certified copy of the instrument of transfer of a brand. (§ 8 ch 51 SLA 1953; am § 9 ch 168 SLA 1970; am § 7 ch 68 SLA 1975)

**Sec. 45.50.290. Certificate of registration as evidence.** A certificate of registration of a brand or a certified copy of the certificate or of the instrument of

transfer of a registered brand is prima facie evidence of the ownership of the timber property impressed with or displaying the registered brand. (§ 8 ch 51 SLA 1953; am § 10 ch 168 SLA 1970; am § 8 ch 68 SLA 1975)

**Sec. 45.50.300. Registration as constructive notice.** Registration by the department and filing for record in the department files of a true copy of the certificate of registration or the transfer instrument is constructive notice of the ownership of the brand. (§ 8 ch 51 SLA 1953; am § 11 ch 168 SLA 1970; am § 9 ch 68 SLA 1975)

**Sec. 45.50.310. Disposition of fees.** Fees collected under AS 45.50.210 - 45.50.325 by the department shall be deposited in the general fund of the state. (§ 9 ch 51 SLA 1953; am § 12 ch 168 SLA 1970)

**Sec. 45.50.315. Regulations.** The department may adopt regulations necessary to implement AS 45.50.210 - 45.50.325. (§ 13 ch 168 SLA 1970)

**Sec. 45.50.320. Penalties for fraudulent branding or other acts.** A person who fraudulently brands timber property with a brand which the person knows or has reasonable cause to know is the registered brand of another person, or who knowingly alters, defaces, obliterates, or destroys a registered brand impressed or displayed upon timber property, or who knowingly sells or disposes of, or attempts to sell or dispose of, or to convert or appropriate to the person's own use, without the written consent of the owner, timber property impressed with or displaying upon it a registered brand of another person, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment in jail for not more than six months, or by both. (§ 7 ch 51 SLA 1953; am § 14 ch 168 SLA 1970; am § 61 ch 32 SLA 1971)

**Sec. 45.50.325. Definitions.** In AS 45.50.210 - 45.50.325

- (1) "brand" includes a mark or other designation that has been registered with the department;
- (2) "commissioner" means the commissioner of natural resources;
- (3) "department" means the Department of Natural Resources;
- (4) "rightful transporter" means a person who has an executory contract interest in the timber property the person is transporting, or that person's designee, or one who, in the normal usage of the trade, transports, or aids in the transportation of, timber property for the benefit of and authorized by the owner of the timber property;
- (5) "timber property" means logs, pilings, poles, other timbers, boom sticks, and boom chains. (§ 15 ch 168 SLA 1970; am § 10 ch 68 SLA 1975; am § 5 ch 232 SLA 1976)

# REGULATIONS

## TITLE 11. Natural Resources

### CHAPTER 05. Fees for Department Services

**11 AAC 05.010. Fees.** (a) Non-refundable fees to apply for authorizations, and fees to obtain publications or services from the department, are as follows: [...]

(2) forestry

- (A) repealed 9/10/2005;
- (B) beach log salvage license fee, \$1,000;
- (C) log brand registration fee, \$50;
- (D) transfer of log brand registration fee, \$25;
- (E) renewal of log brand registration fee, \$25;
- (F) repealed 5/5/93;
- (G) repealed 9/10/2005;

(3) material sales

- (A) application fee for negotiated material sale, \$100;
- (B) application fee for competitive material sale, \$100;
- (C) document handling fee, \$75; [...]

(16) miscellaneous, including services and publications not mentioned elsewhere

- (A) late payment service charge, \$25;
- (B) returned check fee, \$25;
- (C) photocopy fee (except as noted elsewhere in this section), \$.25 per sheet;
- (D) fee for a black and white reproduction of a map, plat, or diagram,
  - (i) size #1 (up to 18" x 24"), \$2;
  - (ii) size #2 (approximately 24" x 36"), \$2.50;
  - (iii) size #3 (approximately 30" x 36"), \$3;
  - (iv) size #4 (approximately 34" x 48"), \$3.50;
- (F) repealed 5/5/93;
- (G) other publications and special-purpose information packets not mentioned elsewhere, variable fee that will not exceed the department's costs to produce the publication;
- (I) facsimile transmission, basic fee of \$4 plus \$.25 per page;

(17) computer-related services, other than those electronic services and products subject to AS 40.25.115

- (A) paper printout for a batch report, the amount charged to the department by the Department of Administration for printing the report;
- (B) on-line paper printout, \$.20 per page;
- (C) magnetic tape, \$.25 each;
- (D) programming, analysis, and production, \$56 per hour for regular time (non-overtime);
- (E) technical training, \$43 per hour for regular time;
- (F) computer processing on the state mainframe, the amount charged to the department by the Department of Administration for the computer processing;



- (G) other computer processing,
  - (i) DNR mini-computer network second, \$.03;
  - (ii) DNR plotter per minute, \$1;
- (H) plotter media,
  - (i) opaque paper, \$1 per foot;
  - (ii) mylar or acetate, \$3 per foot;
  - (iii) thermal print, 8 1/2" by 11", \$3;
  - (iv) thermal print, 11" by 17", \$5; [...]

(b) This section lists all fees assessed by the department by regulation for authorizations, publications, and services which are not otherwise prescribed by statute. This section does not limit the amount the department may charge or receive under contracts, such as concession contracts, or bonuses, royalties, rentals, and other contractual obligations. This section does not list authorizations, publications, and services that the department provides free of charge.

(c) A fee prescribed by this section is waived for a federal, state, or municipal agency, except that [...]

(3) the fee is not waived if the federal, state, or municipal agency does not waive its fee for a similar document supplied to or application filed by the department;

(4) a fee for a computer-related service prescribed by (a)(17) of this section is not waived if the federal, state, or municipal agency does not reciprocate by providing a similar level of computer-related services to the department free of charge. [...]

(e) Except as provided in (f) of this section and in 11 AAC 99.130, this subsection is the department's schedule of standard user fees for certain surface land use authorizations and for material sales for public projects under AS 38. It does not apply to authorizations whose rental or use fee is fixed by statute or is required by statute to be based on an appraisal of market value. If a revocable-at-will authorization is revoked without cause, the unused portion of the annual use fee for the authorization is refundable, prorated on a monthly basis. A fee based on acreage applied to each acre of fractional acre. The fees covered by this subsection are as follows; [...]

(3) land use permit under AS 38.05.850 for commercial use of a structure or facility that is or can be occupied, such as a floating logging camp, caretaker's housing adjacent to a log storage site, a floating lodge, or a guide's or outfitter's camp, an annual fee that is the largest of the following applicable fees:

(A) if the facility is removed after a period of less than six months, \$500;

(B) if the facility remains in place six months or more, \$1000; [...]

(5) land use permit under AS 38.05.850 for commercial use of a structure or facility not covered by (3) of this subsection, such as a commercial mooring buoy, fish holding pen, log storage, A-frame logging, or equipment staging area for a construction project, an annual fee of \$250 for the first acre, plus \$100 for each additional acre; [...]

(22) permit for the commercial use or commercial harvest of forest products other than timber,

(A) \$.05 each for willow cuttings;

(B) \$0.25 each for alder stems less than 15 feet long and three inches in diameter at the small end'

(C) \$.20 each for shrubs or perennials;

(D) \$.20 per square foot for bark or vegetative mats;

(E) \$.80 per gallon for berries;

(F) \$.20 per tap for birch syrup

(G) \$.50 pr bushel for cones;

(H) \$3 per pound for seeds;

(I) \$.20 per pound for medicinal plants, mushrooms, moss and club moss, or lichens;

(J) \$.05 per pound for burls, foliage or greenery, herbaceous plants, conks, or non-medicinal roots;

(f) Notwithstanding (e) of this section, the director may require a fee higher than that set out in (e) of this section if the director determines that the location or nature of the use makes a higher fee appropriate to ensure a reasonable return to the state. Under this subsection, and at the director's discretion to ensure a reasonable return to the state, the director may set

(1) a variable fee of 2.5 percent of the gross receipts attributable to the use of the site; or

(2) a fee based on the director's estimate of the market value of the use or, at the applicant's option and expense after receiving the director's written estimate of that value, based on an appraisal of the market value of the use. (Eff. 1/1/86, Register 96; am 8/10/86, Register 99; am 9/28/86, Register 99; am 8/23/87, Register 103; am 1/28/88, Register 105; am 7/1/89, Register 110; add'l am 7/1/89, Register 110; am 8/16/89, Register 111; am 12/9/89, Register 112; am 1/17/90, Register 113; am 3/16/91, Register 117; am 12/25/91, Register 120; am 5/14/92, Register 122; am 9/16/92, Register 123; am 4/18/93, Register 126; am 5/5/93, Register 126; am 10/1/94, Register 131; am 12/13/95, Register 136; am 2/16/96, Register 137; am 5/24/96, Register 138; am 5/18/97, Register 142; am 2/21/98, Register 145; am 7/29/98, Register 147; am 8/26/98, Register 147; am 9/10/98, Register 147; am 1/29/99, Register 149; am 5/9/99, Register 150; am 2/9/2001, Register 157; am 5/3/2001, Register 158; am 8/23/2001, Register 159; am 10/27/2002, Register 164; am 1/14/2004, Register 169; am 10/2/2004, Register 171; am 1/16/2005, Register 173; am 9/10/2005, Register 175; am 2/15/2006, Register 177; am 3/13/2006, Register 177, am 11/22/2006, Register 180)

Authority: AS 03.10.020 AS 27.21.030 AS 27.21.940 AS 38.04.045 AS 38.04.900 AS 38.05.020 AS 38.05.035 AS 38.05.057 AS 38.05.082 AS 38.05.177 AS 38.05.180 AS 38.05.295 AS 38.05.600 AS 38.05.850 AS 38.08.110 AS 38.09.020 AS 38.09.110 AS 38.35.020 AS 38.35.050 AS 38.50.160 AS 38.95.240 AS 40.15.370 AS 40.17.030 AS 40.25.110 AS 41.06.020 AS 41.21.020 AS 41.21.026 AS 41.23.440 AS 44.37.020 AS 44.37.025 AS 44.37.027 AS 45.29.525 AS 45.50.315 AS 46.15.020 AS 46.15.035 AS 46.15.037

## **CHAPTER 071. Timber and Material Sales**

### **Article 01. Timber and Material Sale Procedures**

#### **Section**

- 5. Applicability.**
- 10. Timber and material sale offering.**
- 15. Timber or material requested by other state agencies.**
- 20. Notice of sale.**
- 25. Applicable laws and regulations.**
- 30. Qualifications of applicant or bidder.**
- 35. Application for negotiated sales.**
- 40. No rights before sale.**
- 45. Negotiated sales.**
- 50. Negotiated personal-use timber sales; limited material permits.**
- 55. Negotiated sales under AS 38.05.118 .**
- 60. Competitive sales.**
- 65. Competitive sale bid deposits.**
- 70. Pre-sale deposits for negotiated timber sales.**
- 75. Award of sale.**
- 80. Passage of title.**
- 85. Volume determinations.**
- 90. Pricing for sale of materials.**
- 92. Pricing for sale of timber.**
- 94. Number of high value-added contracts per region.**
- 95. Performance bond.**
- 96. Definition of "high value-added wood product."**
- 98. Availability of processing facilities.**
- 100. Rights-of-way.**

**11 AAC 71.005. Applicability.** This chapter applies to sales of timber or material by the State of Alaska. (Eff. 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.110

- 11 AAC 71.010. Timber and material sale offering.** (a) The director will determine the location and approximate volumes of timber and of material to be made available for sale under this chapter.
- (b) The director will include each proposed timber sale on the five year sale schedule in accordance with AS 38.05.113 , unless that sale is exempt under (c) or (d) of this section.
- (c) A timber sale negotiated under AS 38.05.115 is a small sale exempt from AS 38.05.113 .
- (d) An emergency sale is exempt from AS 38.05.113 . An emergency sale is a sale of timber that the director finds must be made on a expedited basis to
- (1) avoid loss of the market value of timber that has been damaged by fire, insect infestation, or an act of nature;
  - (2) avoid loss of the market value of timber that is threatened by insect infestation;

- (3) create fire breaks;
  - (4) reduce fuel-loading of the forest; or
  - (5) reduce the spread of insect infestation.
- (e) The division will offer timber or material sales on land selected by a municipality under AS 29.18.201 - 29.18.213 with the concurrence of the municipality. (Eff. 7/2/82, Register 83; am 3/25/93, Register 125)  
Authority: AS 38.05.020 AS 38.05.110 AS 38.05.113 AS 38.05.115 AS 38.05.120

**11 AAC 71.015. Timber or material requested by other state agencies.**

The division will, in its discretion, transfer timber or material to another state agency by an interagency land management assignment or negotiated sale pursuant to AS 38.05.810 . However, the other state agency may not convey the timber or material to a third party. The division will not offer a timber or material sale within the area which is subject to the inter-agency land management assignment without the concurrence of the other state agency. (Eff. 7/2/82, Register 83)  
Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120

**11 AAC 71.020. Notice of sale.** (a) The division will give public notice of a competitive sale of timber or material in accordance with AS 38.05.945. Public notice given under this subsection will state

- (1) the minimum acceptable bid, if applicable;
  - (2) the method of bidding;
  - (3) the time and place of sale;
  - (4) the amount of deposit required;
  - (5) whether additional information is available at division offices;
  - (6) the duration of the contract;
  - (7) that the state reserves the right to reject any or all bids and that, unless all bids are rejected, the sale will be awarded to the responsible qualified bidder offering the highest total bid value for timber and the highest unit price for material; and
  - (8) the amount of any bond required.
- (b) The division will, in its discretion, make a negotiated sale of 500 M.B.M. or less of timber or 25,000 cubic yards or less of material without giving public notice of the sale.
- (c) The division will give public notice of a negotiated timber sale authorized by AS 38.05.118 in accordance with AS 38.05.945.
- (d) The division will, in its discretion, make a negotiated sale of timber or material authorized by AS 38.05.810 (a) without giving public notice of the sale in accordance with AS 38.05.945. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)  
Authority: AS 38.05.020 AS 38.05.115 AS 38.05.120

**11 AAC 71.025. Applicable laws and regulations.** A purchaser or licensee under this chapter and the purchaser's or licensee's employees, subcontractors, and assigns shall comply with the federal, state, and local laws and regulations which apply to the protection and use of the land on which the timber or material is located.

Compliance with the provisions of this chapter is a condition of a sale or license under this chapter. Failure to comply with the provisions of this chapter is cause for suspension or cancellation of the sale or license. (Eff. 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120

**11 AAC 71.030. Qualifications of applicant or bidder.** (a) A person is qualified to apply or bid for a timber or material sale if he is

(1) at least 18 years of age, if an individual;

(2) legally competent to enter into and carry out the provisions of a sale contract; and

(3) licensed to do business in the state, if the sale is for commercial intention.

(b) The director may require an applicant or bidder to submit conclusive evidence of his qualifications under (a) of this section. (Eff. 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.035. Application for negotiated sales.** (a) A person seeking to negotiate the purchase of more than 10 M.B.M. of timber or more than 200 cubic yards of material must file an application at the regional office of the division nearest the desired purchase site on a form provided by the department. The applicant must file a separate application for each sale. The application fee, if any, prescribed by 11 AAC 05.010 must accompany the application. The application must contain the contract numbers of each timber or material contract the applicant has entered into with the state during the previous 12 months. The applicant need not list the applicant's log salvage licenses. For negotiated sales, the division will consider the subsidiaries, divisions, branches, partnerships, or joint ventures of the applicant to be the same applicant.

(b) A person who seeks to salvage unbranded or abandoned timber must apply for a log salvage license in accordance with 11 AAC 71.405. (Eff. 7/2/82, Register 83; am 1/1/86, Register 96; am 2/8/2001, Register 157)

Authority: AS 38.05.020 AS 38.05.035 AS 38.05.110 AS 38.05.115 AS 38.05.120 AS 38.05.850

**11 AAC 71.040. No rights before sale.** Filing an application for the purchase of timber or material does not vest a right in the applicant to enter upon the land or to sever or remove the timber or material. If a person, while unauthorized to do so, enters upon state land and commences cutting, extraction, or salvage operations, the division will, in its discretion, refer the person to the Department of Law for appropriate civil or criminal action. (Eff. 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115 AS 38.05.120

**11 AAC 71.045. Negotiated sales.** (a) A purchaser may enter into more than one negotiated timber or material sale contract with the division, so long as the total amount purchased within any 12-month period does not exceed the negotiated timber or material sale limits set by AS 38.05.115 . The negotiated timber sale limit set by AS 38.05.115 does not apply to timber acquired under a log salvage license under 11 AAC 71.400 - 11 AAC 71.435.

(b) Notwithstanding the provisions of (a) of this section, the division will not enter into a negotiated sale contract with a person to whom the division has previously sold timber or material if the director determines that the contract will unfairly exclude from participation in the sale of timber or material other interested persons to whom the division has not previously sold timber or material.

(c) The minimum price for a negotiated timber sale is the base price established by the director under 11 AAC 71.092.

(d) The director will establish a minimum deposit for a negotiated sale of more than 10 M.B.M. of timber or 200 cubic yards of material, which the purchaser must make at the time the sale contract is entered into. For a timber sale contract, the director will require a deposit of at least five percent of the negotiated price and may require as much as 100 percent. For a negotiated material sale contract, the director will require a deposit of at least ten percent of the negotiated price or \$250, whichever is more. The department will retain the deposit to cover administrative costs incurred in offering the negotiated material sale, except that if the purchaser removes and pays for at least 75 percent of the material volume covered by the contract, the deposit may be applied, in whole or in part, to the final payment that becomes due under the contract. A purchaser may make a deposit under this section in cash or by certified check, cashier's check, or money order.

(e) A negotiated timber sale, other than a timber sale negotiated under AS 38.05.118, is for a period of time that may not exceed one year. The division will not grant an extension of time under this subsection. (Eff. 7/2/82, Register 83; am 8/23/87, Register 103; am 8/16/89, Register 111; am 8/6/94, Register 131; am 6/21/98, Register 146; am 2/8/2001, Register 157)

Authority: AS 38.05.020 AS 38.05.115 AS 38.05.120 AS 38.05.850 AS 38.05.860 AS 38.35.020

**11 AAC 71.050. Negotiated personal-use sales; limited material permits.** (a)

The division may negotiate with a person for the sale of timber for the person's personal use, or issue a revocable, nonexclusive permit for the removal of up to 200 cubic yards of material for personal or commercial use. Timber acquired by a purchaser in a sale under this section may not be sold, bartered, or used for commercial purposes.

(b) The division will, in its discretion, require a person applying for a negotiated personal-use sale of timber to be used other than for fuel wood to show proof of having land on which to use the timber and to show proof that timber acquired by the person in previous personal-use sales was actually used in accordance with the terms of that sale.

(c) The purchaser must make payment in full of the total sale price in order for a contract to be executed for a personal-use timber sale or to receive a limited material permit under this section. A formal application or application fee is not required for a limited material permit.

(d) A negotiated personal-use timber sale is for a negotiated period of time that may not exceed one year. The division will not grant an extension of time under this subsection. (Eff. 7/2/82, Register 83; am 2/8/2001, Register 157)

Authority: AS 38.05.020 AS 38.05.115 AS 38.05.120 AS 38.05.850

**11 AAC 71.055. Negotiated sales under AS 38.05.118.** (a) The division may negotiate with a local manufacturer for a timber sale under AS 38.05.118 if the director determines that

- (1) the rate of unemployment in the area in which the timber is located is at least 135 percent of the statewide average rate of unemployment for the preceding 12-month period for which a statistical comparison is available, or the rate of unemployment is expected to exceed 135 percent of the statewide average within two years;
- (2) a permanent manufacturing facility exists in the area in which the timber is located with the capacity to process at least 50 percent more on a board-foot-per-day basis than the average daily production of the manufacturing facility during the three-year period immediately preceding the date of the sale or such a facility is expected to exist within two years; and
- (3) an economically operable state timber resource exists in the area in which the timber is located and the state timber resource has the capacity to sustain a level of harvest on a sustained-yield basis which is at least 20 percent greater than the level of harvest of the state timber resource on the date of the sale.

(b) In determining whether a negotiated sale under this section is in the best interests of the state, the commissioner will consider

- (1) the local manufacturer's
  - (A) financial backing and capability;
  - (B) experience in the proposed undertaking; and
  - (C) ability to meet bonding or insurance requirements; and

(2) any other factors the commissioner determines to be in the best interests of the state. (Eff. 7/2/82, Register 83; am 9/6/96, Register 139; am 7/6/2006, Register 179)

Authority: AS 38.05.020 AS 38.05.115 AS 38.05.118 AS 38.05.120

**11 AAC 71.060. Competitive sales.** The division will conduct public oral outcry auctions for the competitive sale of timber or materials in accordance with the procedures established for land auctions by 11 AAC 67.045. If the division sells timber or materials by sealed bid, the sealed bids must be on bid forms furnished by the division, signed, and submitted as specified in the notice of sale. In the event of a tie in high sealed bids, the division will determine the successful bidder by lot. The division will reject a bid containing or submitted with a condition or qualification on or a material alteration of the terms as specified in the notice of sale, or which is otherwise not in accordance with law. (Eff. 7/2/82, Register 83)  
Authority: AS 38.05.020 AS 38.05.115 AS 38.05.120

**11 AAC 71.065. Competitive sale bid deposits.** (a) A bidder at an oral outcry auction conducted under 11 AAC 71.060 must deposit with the selling agent, before being eligible to bid, at least 10 percent of the appraised value of the timber or materials on which he intends to bid if the appraised value is \$100,000 or less, and at least five percent or \$10,000, whichever is more, if the appraised value is between \$100,000 and \$500,000. If the appraised value is \$500,000 or more, the director will state the minimum deposit in the notice of sale.

(b) If the sale under 11 AAC 71.060 is by sealed bid, the bidder must deposit an amount determined in accordance with (a) of this section, based on the amount of the sealed bid.

(c) A bidder may make a deposit under this section in cash or by certified check, cashier's check, or money order. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120 AS 38.05.860

**11 AAC 71.070. Pre-sale deposits for negotiated timber sales.** (a) In addition to the deposit required under 11 AAC 71.045, if any, the director will, in his discretion, require an applicant for a negotiated timber sale under 11 AAC 71.035 to deposit an amount equal to the estimated cost of the appraisal, survey, and advertising required under this chapter.

(b) If the division awards the sale to the applicant, the division will credit the money deposited under this section to the amount owed the state for stumpage under the terms of the sale.

(c) If the division does not award the sale to the applicant, the division will refund the money deposited under this section which has not been spent to the applicant.

(Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120 AS 38.05.860

**11 AAC 71.075. Award of sale.** (a) Within 30 days after receipt by certified mail of a contract under this chapter, the purchaser of timber or material must sign and return the contract, together with any required bond. However, the director may, in his discretion, extend the period an additional 30 days. If the purchaser fails to complete the contract as required in this section his deposit under 11 AAC 71.070 will be forfeited.

(b) For competitive sales, if the successful bidder fails to comply with the requirements of (a) of this section the director may offer the sale within 45 days to the next high bidder at the price which he bid and under the same terms and conditions. If the next high bidder accepts the offer of sale at the price he bid, he must sign and return the contract, together with a required bond, within 30 days of receipt of the contract by certified mail. (Eff. 7/2/82, Register 83)

Authority - AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120

**11 AAC 71.080. Passage of title.** Except for timber under a valid log-salvage sale license, all right, title, and interest in or to timber or material included in a contract remain with the state until the timber or material has been cut or severed, determined as to volume, removed from the site, and paid for in compliance with contract provisions and applicable laws and regulations. Timber or material which is not removed from the sale or license area by the purchaser or licensee within the period specified by the contract or license or by an extension to the contract or license remains the property of the state. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115



**11 AAC 71.085. Volume determinations.** (a) The division will estimate timber volumes used in appraisals and as a basis for the volume of timber included in a timber sale offering by a timber cruise method prescribed by the director.

(b) Timber volumes reported in cutting reports by the purchaser as a basis for payment must be determined by scaling, unless otherwise specified in the contract.

(c) Material volumes shall be determined in the manner required by the contract.

(Eff. 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115

**11 AAC 71.090. Pricing for sale of materials.** (a) The commissioner will price material for sale under AS 38.05 and this chapter in accordance with this section.

(b) The commissioner will periodically establish base prices for material that represent the administrative cost to the state of conducting the sale. The base prices may vary by area to account for local conditions on administrative cost. The department will use the base prices for material sales at less than their appraised value to a government agency under AS 38.05.810 (a).

(c) The commissioner will periodically establish representative sales prices for material that are an estimate of the material's fair market value. Representative sales prices may vary by area to account for local conditions, but may not be less than the base prices established under (b) of this section. The commissioner will, in the commissioner's discretion, sell up to 25,000 cubic yards of materials for the representative sales price without an appraisal.

(d) Except as provided in (b) and (c) of this section, material will be sold for its appraised fair market value. Appraisal methods will be those customarily used by the appraisal profession.

(e) The appraised fair market value for material sold under (d) of this section will consider operating costs unique to the material source. The sales price for material sold under (c) of this section will, in the discretion of the commissioner, allow for adjustments for operating costs unique to the material source, including

(1) testing for and removal of contamination caused by another party's previous use of the material; or

(2) road construction that will benefit the state after the sale is concluded.

(f) Repealed 6/21/98.

(g) Repealed 6/21/98. (Eff. 7/2/82, Register 83; am 6/21/98, Register 146)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115

**11 AAC 71.092. Pricing for sale of timber.** (a) The commissioner will determine the price of timber for sale under AS 38.05 and this chapter in accordance with this section.

(b) When the commissioner considers entering into a timber sale contract under AS 38.05.123,

(1) the commissioner will establish a base price for timber stumpage that represents the cost to the Division of Forestry of administering the timber sale contract after purchase; the Division of Forestry may not sell the timber for less than its base price;

(2) the base price for timber determined under (1) of this subsection is subject to adjustment; the commissioner will, in the commissioner's discretion, establish an initial stumpage rate; the rate is set by adding adjustments to the base price based upon factors that include, but are not limited to,

(A) the projected or actual percentage of the volume of timber sold under the contract that is locally manufactured into high value-added wood products or other value-added wood products; and

(B) the projected or actual costs to the purchaser of the timber of establishing or improving local manufacturing facilities for the wood products.

(c) Except for timber that is subject to sale under a timber sale contract as provided in AS 38.05.123 (a), the department will sell timber on the basis of its appraised price. The appraised price is a formal determination of the timber's fair market value and is determined by an appraisal conducted by the commissioner. The commissioner will, in the commissioner's discretion, select and apply one or more appraisal methods to determine the appraised price of the timber. Appraisal methods include, at the discretion of the commissioner, comparative market or transactional evidence; end or residual values; other methods customarily used for appraising timber; or another method designed to yield fair market value as determined by the commissioner. To make the appraisal, the commissioner will, in the commissioner's discretion, use costs, prices, values, and other information obtained from prudent operators, state and federal agencies, industry associations, price or market reporting services, or other sources that the commissioner considers reliable.

(d) The commissioner will, in the commissioner's discretion, adjust the appraised price or adjust the method of appraisal under (c) of this section to allow for operating costs. Operating costs that the commissioner may allow include, but are not limited to, costs for activities such as recovering, removing, handling, storing, or transporting the timber.

(e) Except when a redetermination of the appraised value of unharvested timber is required by AS 38.05.118 (a), a contract for the sale of timber will, in the discretion of the commissioner, provide for a redetermination of the appraised price of the timber at specified intervals in order to evaluate the original appraised price as a continued indicator of fair market value. The department may conduct a redetermination under 11 AAC 71.210 whenever a timber sale contract is extended. A timber sale contract must specify other conditions when a redetermination is required and must specify the method of redetermination. (Eff. 6/21/98, Register 146)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.118 AS 38.05.123

**11 AAC 71.094. Number of high value-added contracts per region.** (a) For the purpose of entering into timber sale contracts for local manufacture of high value-added timber products under AS 38.05.123 , the commissioner will negotiate no more than the following number of timber sale contracts each year:

- (1) 10 sales per year in region I;
- (2) five sales per year in region II; and
- (3) five sales per year in region III.

(b) For the purposes of this section, the regions and their boundaries are the same as the regions and boundaries set out in 11 AAC 95.800 designating regions for purposes of AS 41.17.950 (State Forest Practices Act). (Eff. 6/21/98, Register 146; am 6/24/2004, Register 170; am 9/10/2005, Register 175)

Authority: AS 38.05.020 AS 38.05.123

**11 AAC 71.095. Performance bond.** (a) In connection with a timber or material sale, the director will, in his discretion, require the purchaser to provide a performance bond to guarantee performance of the terms of the contract.

(b) If the director requires a performance bond under this section, the bond amount will be based on the total value of the sale: If the total value of the sale is \$50,000 or less, the bond amount will be at least 10 percent of the total value of the sale; between \$50,000 and \$100,000, the bond amount will be at least \$5,000; or \$100,000 or more, the bond amount will be at least five percent of the total value of the sale, but will not exceed \$200,000.

(c) If the value of the sale is less than \$10,000, the bond amount will be rounded to the nearest \$100.

(d) If the value of the sale is more than \$10,000, the bond amount will be rounded to the nearest \$1,000.

(e) The performance bond must be executed on a form provided by the division and may be a corporate surety bond issued by a corporation licensed to do business in Alaska; a personal bond secured by cash or its equivalent or by negotiable securities acceptable to the director, in a sum equal to the amount of the bond, together with an assignment of the security to the state which is attached to and becomes a part of the security; or an individual surety bond guaranteed in a sum equal to the amount of the bond by each of at least two individual sureties who are not related to the purchaser, are of good financial standing, are acceptable to the director, and have liquid assets sufficient to meet any obligation arising from the contract.

(f) The performance bond must remain in effect for the duration of the contract or until released in writing by the director.

(g) If, as determined by the director, the removal of timber or material from a portion of the sale area has been satisfactorily completed, the director will, in his discretion and upon written request of the purchaser, reduce the amount of the performance bond. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115 AS 38.05.120

**11 AAC 71.096. Definition of “high value-added wood product.”** For the purposes of a negotiated timber sale made under AS 38.05.123 , "high value-added wood product" has the meaning given that term in AS 38.05.123 (j), and, in addition, means laminated veneer lumber, shakes, and shingles. (Eff. 6/21/98, Register 146)

Authority: AS 38.05.020 AS 38.05.123

**11 AAC 71.098. Availability of processing facilities.** (a) As part of a negotiated timber sale under AS 38.05.123 , in addition to the requirements of AS 38.05.123 (f), a prospective purchaser of state timber in the sale shall identify the facilities that the prospective purchaser will use for processing the timber.

(b) Timber purchased under AS 30.05.123 may not be harvested unless the facilities identified by the purchaser under (a) of this section are operational and capable of processing the timber. (Eff. 6/21/98, Register 146)

Authority: AS 38.05.020 AS 38.05.123

**11 AAC 71.100. Rights-of-way.** (a) The division will obtain options for the rights-of-way necessary to grant access to a timber sale area. The division, in its discretion, will require a timber purchaser under this chapter to convey to the state temporary easements satisfactory to the director for roads used in hauling timber across private land to the intersection with the nearest public road or public water. Before the acquisition of the easements, the director will consult with adjacent landowners whose interests may be affected by their location.

(b) A purchaser of material under this chapter is responsible for providing access to the material sale area. If a material purchaser obtains an easement or right-of-way over privately owned land, the purchaser shall ensure that the easement or right-of-way provides an easement or right-of-way to the state as well as to the purchaser. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

## **Article 02. Timber and Material Sale Contracts and Operations**

### **Section**

**200. Contract provisions.**

**205. Amendments to contract.**

**210. Contract extension.**

**215. Assignments.**

**220. Suspension.**

**225. Termination of contract.**

**230. Primary manufacture of timber.**

**235. Use of roads and facilities.**

**240. Sale of other timber and materials.**

**245. Damages.**

**250. Protection of improvements.**

**255. Sanitation.**

**260. Notice or demand.**

**265. Rehabilitation and intensive management practices.**

**270. Proper location by purchaser.**

**275. Purchaser's representative.**

**280. Inspection and reports.**

**11 AAC 71.200. Contract provisions.** A timber or material sale contract must include, if applicable, but is not limited to

(1) a description of the sale area, the timber volume or material to be removed from the sale area, the method of payment by the purchaser, the method of removal of the timber or material, the bonds and deposits required of the purchaser, the method of scaling to be used by the purchaser, the purchaser's liability under the contract, the improvements to and occupancy of the sale area required of the purchaser, the reservation of timber or material within the sale area to the division, the provisions of 11 AAC 71.025 , 11 AAC 71.080 , 11 AAC 71.205, 11 AAC 71.225, 11 AAC 71.235 - 11 AAC 71.240 , and 11 AAC 71.280 as they relate to the contract, the warranties made by the division, and the waiver of rights made by the purchaser;

(2) the purchaser's site-specific operating requirements including, but not limited to, requirements under 11 AAC 71.245 , 11 AAC 71.255 , 11 AAC 71.265, and 11 AAC 71.270 and requirements relating to boundary markers and survey monument protection; erosion control and protection of water; fire prevention and control; roads; sale area supervision; protection of fish, wildlife and recreational values; sale area access and safety;

(3) provisions relating to logging methods, silvicultural practices, reforestation, snag felling slash disposal, and stump heights; and

(4) provisions relating to the removal of included timber. Except for timber required or authorized to be left, the purchaser shall fell and buck all trees meeting or exceeding minimum contract utilization standards and shall remove the trees from the sale area. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120

**11 AAC 71.205. Amendments to contract.** (a) A timber or material sale contract may, upon approval of the director, be amended to include at the same unit price additional timber or material in the sale area or in an area adjacent to, or in the immediate vicinity of, the sale area if the amount of timber or material to be included in the amended contract does not exceed 25 percent of the volume provided for in the contract before amendment and if

(1) the volume of timber or material estimated to be in the sale area by the division was grossly in error; or

(2) timber in the sale area has been blown down or infested with insect or disease and prompt harvest is in the interest of full and efficient utilization.

(b) Amendments to the contract will be made in writing and become part of the contract upon mutual agreement of the director and purchaser. However, an amendment under this subsection may not materially affect or change the meaning or intent of the contract. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120

**11 AAC 71.210. Contract extension.** (a) A contract under this chapter must state the date upon which the severance or extraction of timber or material under the contract is to be completed.

(b) A contract may be extended before its expiration if the director determines that the

(1) delay in completing the contract is due to unforeseen events beyond the purchaser's control, but not including events that a prudent bidder would take into account such as market fluctuations, equipment failures, or typical weather conditions; or

(2) extension is in the best interests of the state.

(c) A written request for a timber sale contract extension must be submitted to the division of forestry at least 30 days before the contract expiration date. A contract extension may not exceed one year. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83; am 3/15/97, Register 141; am 2/8/2001, Register 157)  
Authority: AS 38.05.020 AS 38.05.115

Editor's note: The addresses for submitting requests for extension of timber sale contracts are: Coastal Region: Regional Forester, 400 Willoughby Ave., 3rd Floor, Juneau, AK 99801-1724; Interior Region: Regional Forester, 3726 Airport Way, Fairbanks, AK 99709-4609.

**11 AAC 71.215. Assignments.** (a) A purchaser may not assign all or part of a contract under this chapter without the written approval of the director. The director will, in his discretion, approve an assignment of all or part of a contract upon written request of the purchaser if the director determines that the assignment will not prevent timely completion of the contract.

(b) A purchaser is responsible for complying with the provisions of a contract regardless of whether he assigns all or part of a contract to another person. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)  
Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120

**11 AAC 71.220. Suspension.** The director will, in his discretion, suspend all or part of the operations under a contract if he determines, after notice, that the purchaser has breached a provision of the contract. At the request of the purchaser a hearing will be scheduled by the director as soon as possible after the suspension has been imposed to review the director's determination. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)  
Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120

**11 AAC 71.225. Termination of contract.** If the purchaser breaches a provision of the contract, the director will, in his discretion, give the purchaser written notice of the breach. If, after giving the purchaser notice of the breach, the breach is not remedied in the time specified by the director, the director will, in his discretion, terminate the contract. If the director terminates the contract, title to the timber or material which has not passed to the purchaser vests in the state, and the purchaser is liable for damages sustained by the state arising from the purchaser's breach. (Eff. 7/30/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)  
Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120

**11 AAC 71.230. Primary manufacture of timber.** (a) The director will, in his discretion, require that primary manufacture of timber removed under this chapter be accomplished within the state to the extent consistent with law.

(b) For the purposes of this section, the director will consider timber which has been manufactured into a product for use without further processing as having been primarily manufactured only if the director determines that there is a market for the product. (Eff. 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120

**11 AAC 71.235. Use of roads and facilities.** The state has the right to use, for the protection and administration of state lands, a road constructed by the purchaser for access to the timber or material acquired by the purchase under this chapter. The division will, in its discretion, authorize other persons to use roads and facilities constructed and maintained by the purchaser if the use does not interfere with the operations of the purchaser and if the other persons either perform a share of maintenance of the roads and facilities based on their use of the road and facilities or pay to the purchaser the cost of their share of the maintenance as agreed upon by the purchaser and the other persons. If the purchaser and the other persons cannot agree upon the cost of the other persons' share of maintenance of the road and facilities, the director will determine that cost. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.240. Sale of other timber and materials.** The division reserves the right to sell from the sale area during the time that a purchaser's contract is in effect timber or material which is not covered by the contract if the removal of the timber or material will not interfere, in the director's judgment, with the operations of the purchaser. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120

**11 AAC 71.245. Damages.** (a) A purchaser shall conduct operations under a contract under this chapter in a workmanlike manner and may not unnecessarily damage the land or resources in the sale area. Damage attributable to the purchaser's operations which, as determined by the director, is excessive or was avoidable must be corrected by the purchaser to the satisfaction of the director within the time designated by the director. The division will assess a purchaser's liability for damage in accordance with the purchaser's contract.

(b) If a purchaser cuts or removes timber or material which is not designated for cutting or removal under the purchaser's contract, the purchaser is liable for damages as provided in the purchaser's contract. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115 AS 38.05.360

**11 AAC 71.250. Protection of improvements.** A purchaser under this chapter shall promptly restore improvements damaged by the purchaser's operations. The

purchaser shall keep roads and skid trails designated for forest protection or other purposes free of logs, slash, and debris and shall promptly repair the roads and skid trails if they are damaged by the purchaser's operations. The purchaser shall maintain roads during the term of the contract with allowance for normal wear and tear. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)  
Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.255. Sanitation.** A purchaser under this chapter shall maintain improvements located on state lands and used by the purchaser in connection with the purchaser's operations in a clean condition. If a purchaser constructs, operates, or maintains buildings, toilets, garbage pits, or other structures in the sale area, the purchaser must do so in accordance with applicable regulations of the Department of Environmental Conservation and Department of Fish and Game. If a purchaser moves a structure, camp, or other improvement located on state land from one location to another or if the purchaser abandons the improvement, the purchaser shall burn or otherwise dispose of the debris and the abandoned improvement and shall clean and restore the site of the improvement unless otherwise specified in the contract. A purchaser shall dispose of refuse in a manner which prevents it from entering a body of water. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)  
Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.260. Notice or demand.** A notice or demand which, under the terms of a contract under this chapter or under a statute, must be given or made by a party to the contract, must be in writing, and must be given by registered or certified mail addressed to the other party at the address of record. Notice is effective upon receipt by the other party. (Eff. 7/2/82, Register 83)  
Authority: AS 38.05.020 AS 38.05.115 AS 38.05.120

**11 AAC 71.265. Rehabilitation and intensive management practices.** (a) The director will, in his discretion, require a purchaser of material to rehabilitate the sale area. The contract will include a special provision requiring the rehabilitation and the appraised unit cost of the material for sale shall reflect this requirement. The director will, in his discretion, require the purchaser to submit a complete mining plan for a large material-sale area which must be rehabilitated under this subsection.

(b) The director will, in his discretion, require a purchaser of timber to provide site-specific measures for intensive management practices on the sale area. The intensive management practices may include, but are not limited to, seedbed preparation, seeding, planting, thinning, and pruning. The director will arrange for intensive management practices under this subsection by including specific provisions in the contract and allowing for the intensive management practices in setting the appraised price of timber for the sale. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)  
Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.05.120



**11 AAC 71.270. Proper location by purchaser.** A purchaser is responsible for the accurate location of operations under the purchaser's contract under this chapter and for a survey necessary for the accurate location, unless otherwise specified in the contract. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.275. Purchaser's representative.** During the time that operations under a purchaser's contract under this chapter are in progress, the purchaser shall have an authorized representative available on the site of the operations to receive and carry out, on the purchaser's behalf, a notice or instruction given by an agent of the division relating to the performance of the contract. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.120

**11 AAC 71.280. Inspection and reports.** (a) Activities conducted on state land under timber or material sale contracts or under log salvage licenses are subject to inspection by agents of the division. Books and records of a purchaser or licensee, and of the purchaser's or licensee's contractors and subcontractors, relating to operations under the contract or license are also subject to inspection by agents of the division. Upon request of the purchaser or licensee, the division will keep information obtained under this section confidential to the extent permitted by law. (b) In a material sale the director will, in his discretion, require the purchaser to submit monthly, semiannual, annual, or other periodic reports, including a final report, on a form provided by the division. The reports must provide an accurate accounting of the quantity of materials removed. (Eff. 7/20/60, Register 1; am 11/20/60, Register 2; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.035 AS 38.05.115 AS 38.05.120

## **Article 03. Timber and Logging Requirements**

### **Section**

**300. Annual operating plan.**

**305. Quarters for state personnel.**

**310. Construction authorization.**

**315. Log identification.**

**320. Orderly progress of logging.**

**325. Completed areas.**

**330. Loss of timber.**

**335. Hazard reduction.**

**340. Safety.**

**345. Snag felling.**

**350. Stump heights.**

**11 AAC 71.300. Annual operating plan.** A purchaser of timber under this chapter shall if required by the contract, before beginning operations within the timber sale area, and before beginning operations each calendar year thereafter,

prepare an annual plan of operations acceptable to the director. The plan of operations may be modified by written mutual agreement of the director and the purchaser. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.305. Quarters for state personnel.** The director will, in his discretion, require a purchaser of timber under this chapter to provide cabins or quarters of the customary type in use in logging camps and satisfactory to the state for use by state personnel inspecting timber contract operations. Ownership of the cabins or quarters remains with the purchaser. The purchaser shall rent the cabins or quarters to state personnel at a rate agreed upon in advance by the director and the purchaser. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.310. Construction authorization.** (a) The division will, in its discretion, authorize a purchaser under a timber sale contract under this chapter to

- (1) construct, reconstruct, and maintain roads, bridges, and other transportation facilities needed for cutting and removing timber; and
- (2) construct in the sale area temporary buildings or other improvements necessary for logging or processing timber.

(b) Transportation facilities and other improvements constructed by a purchaser under (a) of this section must be located, constructed, and maintained in accordance with the provisions of the purchaser's timber sale contract and, unless otherwise specified in the contract and except as provided in 11 AAC 71.305 , must remain on the sale area as property of the state.

(c) Design and location plans for transportation facilities constructed under (a) of this section must comply with the purchaser's contract. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.090 AS 38.05.115

**11 AAC 71.315. Log identification.** The division will, in its discretion, require a purchaser of timber under this chapter to identify timber with a brand or other mark approved by the director before removing the timber from the sale area. (Eff. 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.320. Orderly progress of logging.** The director will, in his discretion, require that operations on a subdivision of a timber sale area be completed before logging begins on other subdivisions. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.325. Completed areas.** If a purchaser has satisfactorily complied with the timber sale contract requirements on a subdivision of the sale area and the

director has acknowledged the purchaser's compliance in writing, the division will not require the purchaser to perform additional work under the contract on the subdivision. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.330. Loss of timber.** If timber under a contract under this chapter is destroyed or damaged by fire, wind, flood, insects, disease or other cause to the extent that it is unmerchantable, the holder of title to the destroyed or damaged timber bears the loss. The state is not obligated to supply, nor is the purchaser obligated to accept and pay for, other timber in place of the destroyed or damaged timber. A loss of or damage to timber removed from the sale area under the contract must be borne by the purchaser. This section alone does not relieve either party to a contract of liability for negligence. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.335. Hazard reduction.** For a timber sale area in which the director determines that logging slash will pose a serious hazard to effective forest protection or regeneration, the director will require the purchaser to reduce the hazard by burning or by another method specified in the timber sale contract. The appraisal prepared for the sale under 11 AAC 71.092 will reflect the cost of hazard reduction required by this section. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83; am 6/21/98, Register 146)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.340. Safety.** A purchaser of timber under this chapter and the purchaser's employees and subcontractors shall conduct their operations under the timber sale contract in a safe and workmanlike manner in compliance with the state occupational safety and health standards for logging established by the Alaska Department of Labor and Workforce Development and shall take the steps reasonably necessary to allow the agent of the division to safely scale and inspect cutting, logging, construction, or other activities of the purchaser under the contract. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.110 AS 38.05.115 AS 38.50.120

Editor's note: As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125 (b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

**11 AAC 71.345. Snag felling.** A purchaser under this chapter must fell dead timber concurrently with the purchaser's logging operation unless otherwise specified in the timber sale contract. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.350. Stump heights.** A purchaser of timber under this chapter must cut stumps in a manner which minimizes waste and does not exceed the maximum height set by the timber sale contract. Stumps which are not cut as specified in the purchaser's contract must be paid for by the purchaser at the rate set in the contract for fixed and liquidated damages. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

#### **Article 04. Unbranded or Abandoned Timber Property Sales.**

##### **Section**

**400. Sale of unbranded or abandoned timber property.**

**405. Application for log salvage license.**

**410. Selection of applicant.**

**415. License fees and conditions.**

**420. Prohibited areas.**

**425. Timber lost in salvage license area.**

**430. Revocation or suspension.**

**11 AAC 71.400. Sale of unbranded or abandoned timber property.** (a) The director will, in his discretion

(1) designate areas in which he intends to offer log salvage licenses for the sale of unbranded or abandoned timber property; or

(2) accept nominations for a salvage license for a specific area, the size or boundaries of which the director will, in his discretion, limit to manageable units.

(b) A log salvage license transfers title to the unbranded or abandoned timber property in the license area. However, the title and interest in the timber property which is not removed from the license area within the period the license is in effect revert to the state. (Eff. 3/2/78, Register 65; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.405. Application for log salvage license.** (a) A person who seeks to salvage unbranded or abandoned timber property from the water, shoreland, or tideland of the state may apply in person or by mail to an office of the division. The application must be on a form provided by the division, be signed by the applicant, and contain the following information: the specific geographical area of state water and shoreland upon which salvage operations will be conducted; the type of salvage operation proposed, including the specific kind of equipment to be used and measures proposed to protect against environmental damage; and a description of nearby timber operations.

(b) To qualify for a log salvage license, an applicant must be licensed to do business within the state and must have a current log brand for rafting, floating, or towing timber property in the waters of the state.

(c) An applicant may hold only one log salvage license at a time and may not simultaneously be the operator of or have an interest in salvage operations under another log salvage license. (Eff. 3/2/78, Register 65; am 7/2/82, Register 83)

**11 AAC 71.410. Selection of applicant.** (a) The division will grant log salvage licenses offered under 11 AAC 71.400(a) (1) and (a)(2) on a first-come, first-served basis to qualified applicants, subject to (b) of this section.

(b) To be eligible for selection, an

(1) applicant must have submitted an application or nomination for the salvage area;

(2) applicant must meet the requirements of 11 AAC 71.405; and

(3) applicant, if the applicant has previously held a log salvage license, must have met the terms of the previous license.

(c) Repealed 9/6/96. (Eff. 3/28/78, Register 65; am 7/2/82, Register 83; am 9/6/96, Register 139)

Authority: AS 38.05.020 AS 38.05.115 AS 45.50.235 AS 45.50.315

**11 AAC 71.415. License fees and conditions.** (a) Before issuing a log salvage license, the division will publish notice of its intent to claim abandoned timber property, as required by AS 45.50.234 . At the time of application, the applicant shall bear the cost of advertising.

(b) The license fee prescribed by 11 AAC 05.010 must accompany each application for a log salvage license.

(c) The licensee is responsible for obtaining the permits required by law for the salvage operation. The division will inform the licensee of associated permit requirements and will assist the licensee in obtaining permits by supplying relevant information.

(d) If the salvage operation could, in the director's judgment, cause substantial harm to state land, fisheries, or wildlife, or to another operator, either because of the nature of the area in which the salvage operation will take place, the type of operation proposed, or the applicant's qualifications, the applicant shall post a liability bond in an amount the director judges sufficient to cover possible damages, but not to exceed \$10,000.

(e) A log salvage license is valid for one year from the date of issue but shall be temporarily suspended upon notification by transporter of timber to permit timber recovery in the area of salvage. If a log salvage license is suspended under this subsection, the director will, in his discretion, extend the term of the license for a period equal to that portion of the operating season in which the licensee's access to the area of the salvage operation was denied. If, after issuance of a log salvage license, a state-approved log booming, rafting, or storage area is built in the area of the salvage operation during the period the log salvage license is in effect, the director will, in his discretion, modify the log salvage license.

(f) A log salvage licensee may annually renew a log salvage license obtained under 11 AAC 71.400(a) (1) for up to three years by paying the license fee prescribed by 11 AAC 05.010 at least 30 days before the expiration date of the license, and by qualifying under 11 AAC 71.405. The division will include provisions relating to renewal of a log-salvage license under this section in the original license. (Eff. 3/2/78, Register 65; am 7/2/82, Register 83; am 1/1/86, Register 96)

Authority: AS 38.05.020 AS 38.05.035 AS 38.05.115 AS 38.05.120

**11 AAC 71.420. Prohibited areas.** The area in which salvage operations may be conducted under a log salvage license does not include the shoreline within one mile of state-approved log booming, rafting, or storage area or pulp or sawmill. (Eff. 3/2/78, Register 65; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

**11 AAC 71.430. Revocation or suspension.** Upon determination by the director that a licensee or applicant has violated a provision of 11 AAC 71.400 – 11 AAC 71.430 or has made a false statement on his application for a log salvage license or on a report required by a license, the director will, in his discretion, revoke or suspend the license or deny the application. If the director determines that a licensee has altered, obliterated, or removed log brands, has willfully taken unauthorized logs, or has otherwise violated a provision of 11 AAC 71.400 - 11 AAC 71.430, the director will, in his discretion, refuse to consider a subsequent application for a log salvage license from that person. (Eff. 3/2/78, Register 65; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115

## **Article 05. Log Brands**

### **Section**

**500. Log brand.**

**510. Barged logs.**

**520. Brand design.**

**530. Application requirements.**

**540. Cancellation of registration.**

**550. (Repealed).**

**560. Reservation of brands.**

**570. Registration upon transfer.**

**580. Use of unregistered brand.**

**590. Notice or demand.**

Editor's note: Before Register 126, July 1993, the following Article 5, Log Brands (11 AAC 71.500 - 11 AAC 71.590) appeared as Article 4, Log Brands (11 AAC 95.700 - 11 AAC 95.790). As of Register 126, July 1993, this article was moved to 11 AAC 71 and each section was renumbered accordingly. The history note for each section continues to reflect the history of that section as it was originally adopted in 11 AAC 95.

**11 AAC 71.500. Log brand.** In this chapter and in AS 45.50.210 - 45.50.325, "brand" means

- (1) a mark or other designation that has been registered with the department; or
- (2) an impression stamped on timber property with a branding hammer. (Eff. 2/15/81, Register 77)

Authority: AS 38.05.020 AS 45.50.315 AS 45.50.325

**11 AAC 71.510. Barged logs.** Timber property transported by a self-dumping barge will be presumed, upon being loaded on the barge, to be intended to be put in a waterway of the state within the meaning of AS 45.50.230 (a). (Eff. 2/15/81, Register 77)

Authority: AS 38.05.020 AS 45.50.230 (a) AS 45.50.315

**11 AAC 71.520. Brand design.** (a) A diagram or design on paper, within the meaning of AS 45.50.210 (b), will be considered acceptable if it is a sketch or drawing with exact dimensions shown, or a paint or ink impression of the brand. The department will, in its discretion, request the owner of a brand to furnish a paint or ink impression of the brand on paper at any time in order to confirm that the owner's branding hammer conforms to the design of the brand as registered. (b) The actual size of the brand must be at least two inches in diameter or dimensions. (Eff. 2/15/81, Register 77)

Authority: AS 38.05.020 AS 45.50.210 AS 45.50.315

**11 AAC 71.530. Application requirements.** An application must be accompanied by the registration or renewal fee prescribed by 11 AAC 05.010 and, if requested by the department, an impression of the brand to be registered and additional descriptive information. (Eff. 2/15/81, Register 77; am 1/1/86, Register 96)

Authority: AS 45.50.210 AS 45.50.220 AS 45.50.260 AS 45.50.315

**11 AAC 71.540. Cancellation of registration.** (a) The department will, in its discretion, cancel a brand registration, following notice and an opportunity to be heard

- (1) if the owner fails to furnish an impression of the brand or information about the brand or use of the brand when requested to do so by the department;
- (2) upon conviction under AS 45.50.320 ; or
- (3) if the applicant or owner fails to reply to a certified or registered letter from the department requesting information concerning the log brand within a specified period of time; the time period will not be less than 15 days from the date the letter is metered.

(b) A brand registration will be cancelled by request of its owner. The cancellation will be effective upon receipt by the department of a written notice from the owner requesting the cancellation. (Eff. 2/15/81, Register 77)

Authority: AS 38.05.020 AS 45.50.210 AS 45.50.315 AS 45.50.320

**11 AAC 71.550. Fees for registration or transfer of registration.** Repealed 1/1/86.

**11 AAC 71.560. Reservation of brands.** When an acceptable application has been received for registration or renewal of brand registration, the brand will be reserved to the applicant. (Eff. 2/15/81, Register 77)

Authority: AS 38.05.020 AS 45.50.315

**11 AAC 71.570. Registration upon transfer.** No registered brand may be transferred to or used by or on behalf of a third party except after prior written notice to the department, accompanied by a true copy of the instrument of transfer as required by AS 45.50.260 , together with the registration transfer fee prescribed by 11 AAC 05.010. Upon receipt and filing for record of a copy of the transfer instrument and the fee, the department will register the brand and issue a certificate to the new owner. (Eff. 2/15/81, Register 77; am 1/1/86, Register 96)

Authority: AS 38.05.020 AS 45.50.260 AS 45.50.315

**11 AAC 71.580. Use of unregistered brand.** Logs branded with an unregistered brand, or with a registered brand used by a person not authorized to use it, will be considered for all purposes to be unbranded. (Eff. 2/15/81, Register 77)

Authority: AS 38.05.020 AS 38.50.315 AS 38.50.320

**11 AAC 71.590. Notice or demand.** Any notice or demand under this chapter or under AS 45.50.215 - 45.50.325 must be in writing, and must be sent by certified or registered mail to the other party at the address of record. Either party may designate in writing a new address to which the notice or demand is to be mailed. A written notice or demand is considered delivered when mailed from a U.S. general or branch post office. (Eff. 2/15/81, Register 77)

Authority: AS 38.05.020 AS 38.50.315 AS 38.50.320

## **Article 06. General Provisions.**

### **Section**

#### **900. Warranty.**

#### **910. Definitions.**

**11 AAC 71.900. Warranty.** The state warrants neither the quantity nor the quality of the timber or material to be removed from an area under a contract or license under this chapter. However, to the extent practicable and within the limits of funding, the division will attempt to estimate volumes of upland timber in conjunction with a sale using accepted methods in the trade with a standard error factor of plus or minus 10 percent. (Eff. 11/20/60, Register 2; am 6/24/62, Register 5; am 7/2/82, Register 83)

Authority: AS 38.05.020 AS 38.05.115 AS 38.05.120

**11 AAC 71.910. Definitions.** In this chapter (1) "competitive sale" means a sale which is open to competitive bidding by either oral outcry auction or sealed bid; (2) "contract of sale" or "contract" means a written agreement in which the state agrees to sell and the purchaser agrees to buy certain timber or material; (3) "cruise" means an inventory of the timber in a sale area to determine the quantity and quality of forest products which can be derived from it; (4) "director" means

(A) for timber sales, the director of the division of forestry; and

(B) for material sales, the director of the division to whom the commissioner's material sale authorities under AS 38 are delegated;



- (5) "division" means the division to which the authority of the director of lands has been delegated;
- (6) "fair market value" means the highest price described in terms of money, which timber or material would bring if offered for sale for a reasonable time in the open market by a seller willing, but not forced, to sell to a buyer willing, but not forced, to buy, both being fully informed of the purposes for which the timber or material is best adapted or could be used;
- (7) "lost timber" means timber property as defined in AS 45.50.232 relating to reporting of lost logs to the department;
- (8) "material" includes, but is not limited to, the common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, topsoil, peat, and sod;
- (9) "M.B.M." means 1,000 board foot measure;
- (10) "negotiated sale" means a timber sale not exceeding 500 M.B.M. or its equivalent except as authorized under AS 38.05.118, or a material sale not exceeding 25,000 cubic yards or equivalent measure;
- (11) "primary manufacture" means manufacture which is first in order of time or development; the term
- (A) when used in relation to a sawmilling operation, means the breakdown process in which logs are reduced in size by a headsaw, gangsaw, or edger to the extent that the residual cants, slabs or planks do not exceed a nominal eight and three-quarters inches in thickness;
  - (B) when used in relation to a pulp operation, means the breakdown process to the point at which wood fibers have been separated;
  - (C) when used in relation to an operation for veneer for plywood production, it means the production of green veneer;
  - (D) when used in relation to poles or piling, whether treated or untreated, means manufacture for the purpose of use as poles or piling; and
  - (E) when used in relation to timber processing wastes, means manufacture into chips;
- (12) "public auction" has the meaning provided in (1) of this section for "competitive sale";
- (13) "purchaser" means a person who has purchased timber or material and has entered into a contract under this chapter;
- (14) "sale" means the transfer of title to timber or material from the state to the purchaser for consideration;
- (15) "sale area" means the land area on which the designated timber or material of the sale is located; "sale area" includes roads or other transportation facilities necessary for the removal of the timber or material.
- (16) "scaling" means the determination of log volume by measuring, sample measuring, linear measuring, counting, or weighing or by another method acceptable to the director;
- (17) "timber" means a tree, log, pole, bolt, or other wood product;
- (18) "timber processing wastes" means timber, mill residue, logging residue, or other timber processing products not presently being used or in demand for higher-value products;

(19) "unbranded or abandoned timber property" has the meaning provided in AS 45.50.230 (a)(3) and 45.50.235. (Eff. 7/20/60, Register 1; am 6/24/62, Register 5; am 7/2/82, Register 83; am 2/8/2001, Register 157)  
Authority: AS 38.05.020 AS 38.05.115 AS 38.05.120

**Article 6. Forest Fire Protection.**

**11 AAC 95.400 - .495.** See FRPA Regulations booklet.

**TOPIC GUIDE**  
**FOREST MANAGEMENT STATUTES AND REGULATIONS**  
**July 2008**

Note: This guide is presented as an aid and is not all-inclusive.

| <b>TOPIC</b>                  | <b>AS</b>   | <b>11 AAC 71</b>  |
|-------------------------------|---|---|
| ACMP                          | 41.17.900 [see FRPA],<br><b>46.40.010-.210</b> [not included in this booklet]   | 6 AAC 80.010-.900 [not included in this booklet]  |
| Access, traditional means     | 38.04.200 [restricting]   |   |
| Amendments to contracts       |   | .205  |
| Annual operating plan         |   | .300  |
| Appeals                       | 38.05.120 [timber sales],<br><b>38.05.035(i-m)</b>                              |   |
| Applicability                 |   | .005  |
| Arbor Day                     | 41.15.900   |   |
| Archaeological resources      | 41.35.010 [protection of]<br>41.35.070 [and projects]<br>44.37.040 [DNR duties] |   |
| Assignments of contracts      |   | .215  |
| Authority to sign (contracts) | 38.05.035(e)(4)   |   |
| Award of Sale                 |   | .075  |
| Beach logs                    | 38.05.115(c),<br><b>45.50.210-.237</b>  | See also “log salvage.”   |
| Beach log salvage             | 45.50.230(a)(2), .232-.237  | .035(b)   |
| Best interest finding         | <b>38.05.035(e)</b> ,<br>38.05.123(e), (g)                                      |   |
| Bidder qualifications         |   | .030  |
| Bonds, contractors’           | 36.25.010   | .020(a)(8) [notice],<br>.055(b)(1) [negotiated sales],<br>.075 [award], <b>.095 [guidelines]</b> , .415 [salvage] |
| Comment period                | 38.05.945(b)(2)   |   |
| Comments, public              | <b>38.05.035(e), (i)</b> ,<br>38.05.113 [FYSTS],<br>38.05.945(a-b) [Notice]     |   |
| Competitive sales             | 38.05.120, .945 [Notice for]  | <b>.060 [guidelines]</b> , .065 [deposits], .075 [award], .910(1) & (12) [definitions]                            |

| TOPIC                      | AS  | 11 AAC 71   |
|----------------------------|---|---|
| Contracts                  | 36.10.010 [employment preference], 36.25.010 [bonds for], 38.05.118, .123 [negotiated sales], 38.05.120 [timber sales], 38.05.035 [best interest finding] | .092 [pricing of], <b>.200-.225 [guidelines]</b> , .260 [notice or demand], .270 [location], .325 [completed areas], .910(2) [definition] |
| Damages                    | 09.45.730 [for trespass], <b>12.55.035 [fines]</b>  | .225 [termination of contract], <b>.245 [guidelines]</b> , .250 [improvements], .330 [loss of timber], .350 [stump heights], .415 [bonds] |
| Definitions                | 11.46.350 [trespass], 38.04.910 [multiple use], 38.05.965 [AK land act], 45.50.237 [good faith effort], 45.50.325 [log brands]                            | .910  |
| Easements                  | 38.04.058 [restrictions], 38.05.850 [permits]   | .100 [temporary]  |
| Emergency sales            | 38.05.113(c)  | .010(d)   |
| Exemptions to FYSTS        |   | .010 (c-d)  |
| Extensions to contracts    | 45.50.232-.235, .237 [timber recovery period]   | .045(e) [negotiated sales], .050 [personal use], <b>.210 [guidelines]</b>   |
| Fees                       |   | 11 AAC 05.010   |
| Fines                      | <b>12.55.035 [general]</b> , 45.50.320 [fraudulent branding]  |   |
| Fire damage                |   | .010(d) [emergency sale], .330 [loss of timber]   |
| Fire protection            | 41.15.010 - .170  | See FRPA Regs booklet   |
| Fire suppression fund      | 41.15.200 - .240  |   |
| Fish and game protection   | <b>16.05.871</b> , .841-.901  |   |
| Fish passage               | 16.05.841 - .871  |   |
| Five Year Schedules        | 38.05.113   | .010(b-d)   |
| Forest Land Use Plans      | 38.05.112   |   |
| Future effects speculation | 38.05.035   |   |
| Haines State Forest        | 41.15.300-.330  |   |
| Hazard reduction           |   | .335  |
| Habitat protection         | 38.05.112(c) [FLUPs], 38.05.123(e) [negotiated timber sales]  |   |

| TOPIC                            | AS   | 11 AAC 71  |
|----------------------------------|--|--|
| High value added                 | 38.05.123 [negotiated sales]   | .092 [pricing], .094 [number of contracts], .096 [definition]  |
| Historic resources               | 41.35.010 [protection of]  |  |
| ILMAs                            |  | .015   |
| Improvements                     | 38.05.850 [permits for]  | .200 [contracts], .250 [protection of], .255 [sanitation] .310 [construction of]   |
| Insect infestations              | 38.05.117 [and salvage sales], 38.05.118 [and negotiated sales]  | .010(d) [emergency sale], .205(a)(2) [amendment to contract], .330 [loss of timber]  |
| Inspections                      |  | <b>.280 [guidelines]</b> , .305 [quarters]   |
| Intensive management             |  | .265(b)  |
| Local forest products preference | 36.15.010  |  |
| Local manufacturer               | 38.05.118, .123 [negotiated sales for]   | .055 [negotiated sales], .092 [pricing], .094 [value-added], .230 [local preference]   |
| Location                         |  | .270   |
| Log brands                       | 45.50.210-.230, .235, .240-.325  | <b>.315 [guidelines]</b> , .400-.430 [unbranded timber], <b>.500-.590 [guidelines]</b> , .910(19) [definition]                                 |
| Logging                          |  | .200 [contracts], <b>.320-.325, .340-.350</b>  |
| Log salvage                      | See “Beach log salvage”  | .035(b) [abandoned timber], .040 [no rights before sale], .045 [negotiated sales], .080 [title], .280 [inspection], <b>.400-.425 [license]</b> |
| Log storage                      | 38.05.850(a)   | .415 [salvage license], .420 [prohibited salvage]  |
| Multiple use                     | 38.04.065 [in plans], 38.04.910 [definition], 38.05.300 [closing lands to], 41.15.300, .315 [in Haines SF] |  |
| Municipal selected land          | 41.15.315 [in Haines SF]   | .010(e)  |
| Navigable water                  | 38.05.965(13)  |  |

| TOPIC                                    | AS   | 11 AAC 71   |
|--|--|---|
| Negotiated sales                         | 38.05.035(e)(6) [public hearings for], 38.05.115 [<50MBF], <b>38.05.118 [guidelines]</b> , 38.05.123 [for local manufacturers]               | .010(c) [small sale], .015 [ILMAs], .020(d) [notice], .035 [application], <b>.045 [guidelines]</b> , .050 [personal use], .055 [to local manufacturer], .070 [pre-sale deposits], .094 [value-added], .098 [processing facilities], .910(10) [definition] |
| Permits                                  | 38.05.035(e)(6) [public hearing for], 38.05.035(h) [best interest finding], <b>38.05.850 [guidelines]</b> , 38.05.945 [notice for revocable] | .415 [salvage operation]  |
| Personal use sales                       | 38.05.112 [FLUPs], 38.05.850 [permits for], 41.15.315 [Haines SF]  | .050  |
| Plans: regional, area, forest management | 38.04.065 [regional], <b>38.05.112 [guidelines]</b> , 38.05.123(d) [and negotiated timber sales], 41.15.320 [Haines SF]                      |   |
| Prehistoric resources                    | 41.35.010 [protection of]  |   |
| Pricing                                  | <b>38.05.110 [timber sales]</b> , 38.05.123(a) [negotiated sales]  | .045 [negotiated sales], <b>.092 [timber sales]</b> , .265 [intensive management practices], .910(6) [definition]   |
| Processing facilities                    |  | .098  |
| Protection of forests                    | 41.15.010 - .170   |   |
| Public and charitable use                | 38.05.810  |   |
| Public hearings                          | <b>38.05.035(e)(6) [general]</b> , 38.05.035(i) [appeals], 41.15.315, .320 [Haines SF]   |   |

| TOPIC   | AS  | 11 AAC 71   |
|---|---|---|
| Public notice                                   | 38.05.035 [non-timber],<br>38.05.115 [timber sales],<br>38.05.123(b) [negotiated<br>contracts], 38.05.850(c)<br>[irrevocable ROWs],<br><b>38.05.945 [general]</b> ,<br>45.50.230-.234<br>[abandoned beach logs] | .020 [notice of sale], .415<br>[claim abandoned timber],<br>.060-.065 [competitive sales]   |
| Purchaser's representative                      |   | .275  |
| Quarters for personnel                          |   | .305  |
| Resident employment<br>preference               | Repealed  |   |
| Rights before sale                              |   | .040  |
| Rights-of-way                                   | 38.04.058 [restrictions],<br>38.05.850 [permits]  | .100  |
| Roads and facilities                            | 11.46.350 [trespass notice<br>on], 38.05.850 [permits<br>for], 41.15.315 [Haines<br>SF]   | .100 [rights-of-way], .200<br>[contract], .235 [use and<br>maintenance], .250<br>[protection of<br>improvements], .310<br>construction authority],                                    |
| Safety  |   | .200 [in contract], <b>.340<br/>[guidelines]</b>  |
| Salvage sales                                   | 38.05.112(a) [FLUPs and<br>non-forest use], <b>38.05.117<br/>[guidelines]</b>   | .010(d) [emergency sale],<br>.035(b) [negotiated sales],<br>.040 [rights before sale],<br>.045 [negotiated sales], .080<br>[title], .280 [inspections],<br><b>.400-.430 [license]</b> |
| Sanitation                                      |   | .255  |
| Sentences for crimes,<br>felonies, misdemeanors | 12.55.125, .135   |   |
| Snags   |   | <b>.345 [guidelines]</b> , .200 [in<br>contract]  |
| Suspension                                      |   | .025 [sale/license], <b>.220<br/>[operations]</b> , .430 [log<br>salvage]   |
| Sustained yield                                 | 38.04.065 [in land use<br>plans], 38.05.115(a)<br>[timber sales],<br>38.05.123(a) [negotiated<br>timber sales], 41.15.315<br>[Haines SF]  | .055(a)(3) [negotiated sales]   |

| TOPIC                       | AS  | 11 AAC 71  |
|-----------------------------|---|--|
| Tanana Valley State Forest  | 41.17.400 [see FRPA booklet for AS 41.17]                               |  |
| Termination of contract     |   | .225   |
| Theft                       | 11.46.120-.150  |  |
| Timber cruises              | 38.05.110(a)  | .085, .910(3) [definition]   |
| Timber land                 | 38.05.965(23)   |  |
| Timber loss                 | 45.50.232 [beach logs, reporting of]                                    | .330, .910(7) [definition]   |
| Timber sale procedures      | <b>38.05.110</b> , 38.05.810 [public and charitable use]                | .115-.123  |
| Timber sales, small         | 38.05.113(c)  | .010(c)  |
| Timber sales, negotiated    | See “Negotiated sales”  | See “Negotiated sales”   |
| Title to timber             |   | <b>.080 [passage of]</b> , .225 [termination], .330 [loss of], .400 [abandoned timber], .910(14) [definition]                                |
| Traditional means of access | 38.04.200 [may not restrict]  |  |
| Trespass                    | <b>09.45.730 [injuring timber]</b> , 11.46.320-.330, .350(b) [criminal] |  |
| Value-added sales           | 38.05.118, .123 [negotiated sales]                                      | .092 [pricing], .094 [number of], <b>.096 [definition]</b> , .098 [processing facilities], .230 [primary manufacture], .910(11) [definition] |
| Volume determinations       | 38.05.110   | .010 [sale offering], <b>.085 [guidelines]</b> , .092 [pricing], .205 [errors], .900 [warranty], .910(3) & (16) [definitions]                |
| Warranty                    |   | .900   |



## Notes

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

## Notes

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## Notes

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